

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



74-1065

B  
P/S

No. 74-1065

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

GENERAL DOUGLAS MAC ARTHUR SR.,  
VILLAGE, INC., STATE OF NEW YORK,  
COUNTY OF NASSAU, VILLAGE OF HEMPSTEAD,  
TOWN OF HEMPSTEAD, SCHOOL DISTRICT NO. 1  
SADIE SCHWARTZ, D. C. R. HOLDING CORP.,  
HENRIETTA RAND, MARTHA BARKUS and  
SHIRLEY HERSHKOWITZ,

Defendants.

D. C. R. HOLDING CORP., HENRIETTA RAND,  
MARTHA BARKUS and SHIRLEY HERSHKOWITZ,  
SADIE SCHWARTZ,

Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NEW YORK

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A P P E N D I X

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PAGINATION AS IN ORIGINAL COPY

## INDEX

	Page
Docket Entries _____	1
Complaint _____	9
Answer of Defendant, County of Nassau _____	15
Answer of Defendant, Village of Hempstead _____	17
Answer of defendant, Town of Hempstead _____	19
Second Amended Answer of Henrietta Rand, Martha Barkus and Shirley Hershkowitz, as Executors of the Last Will and Testament of the defendant, David Rand _____	22
Answer of Defendant, Sadie Schwartz _____	33
Answer of Defendant, D. C. R. Holding Corp. _____	39
Reply to the defendant, Town of Hempstead, to the Cross Claim of Sadie Schwartz _____	45
Reply of Defendant, Village of Hempstead to the Cross Claim against this defendant by defendant, D. C. R Holding Corp. _____	47
Judgement of Foreclosure and Sale _____	50
Master's Report of Sale _____	59
Notice of Motion for Summary Judgment _____	61
Affidavit in Support of Motion of Defendant, Village of Hempstead for Summary Judgment _____	63
Incorporated Village of Hempstead, Tax Sale Certificate _____	69
Memorandum of Decision and Order _____	71
Judgment _____	85

Notice of Appeal by Henrietta Rand, Martha Barkus and Shirley Hershkowitz _____	86
Notice of Appeal by Sadie Schwartz _____	88
Notice of Appeal by D. C. R. Holding Corp. _____	91



DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
8/4/71	Complaint filed. Summons issued.	1
8/6/71	By Judd, J.-Order dtd 8/4/71 appointing John H. Linn, Esq., as Receiver filed.	2
8/6/71	Oath of Receiver filed.	3
8/9/71	Bond in the amount of \$50,000.00 filed.	4
8-10-71	Notice to attorn... to receiver filed.	5
8-11-71	By JUDD, J.- Order filed that said John H. Finn, Receiver, is authorized to employ Frank Wittman, Inc. as Managing Agent of the subject premises etc. (P/C mailed to attys)	6
8/23/71	Notice of appearance (SCHOOL DISTRICT #1) filed.	7
8/26/71	Notice of appearance (A.T.S. PROP) filed.	8
9/1/71	Answer filed. (COUNTY OF NASSAU)	9
9-1-71	By WEINSTEIN, J.- Order on stip filed dismissing action as to LOUIS SCHIFF, pursuant to Rule 41(a)(1). (P/C mailed to attys)	10
9-7-71	ANSWER of deft VILLAGE OF HEMPSTEAD filed.	11
9/15/71	By weinstein, J.- Order dtd 9/14/71 extending time for deft. GEN. DOUGLAS MACARTHUR SENIOR VILLAGE to answer to complaint to 20 days from 9/14/71 filed.	12
9-21-71	Answer of Town of Hempstead filed	13
9-28-71	Inventory and report of Receiver, John H. Finn, filed.	14
10-1-71	By WEINSTEIN, J.- Order filed, Nov 1, 1971 set for pre-trial conference at 10:00 A.M. (attys notified)	15
10-4-71	ANSWER of deft GENERAL DOUGLAS MacARTHUR SENIOR VILLAGE INC. filed.	16
10-4-71	Notice of motion filed, to limit the powers of the Receiver to collection of rents etc. (ret Oct 15, 1971)	17
10-6-71	Notice of appearance as atty for deft THE PEOPLE OF THE STATE OF NEW YORK & THE STATE TAX COMMISSION filed.	18
10-6-71	By WEINSTEIN, J.- Order filed that John H. Finn, as Receiver is authorized to employ Mario Matthew Cuomo, Esq. of 32 Court St. Bklyn, N.Y. as counsel in all matters pertaining to this action (P/C mailed to attys)	19
10-13-71	Notice of motion filed, pursuant to Rule 56 for summary judgment in favor of pltf etc. (ret Oct 15, 1971)	20
10-13-71	Copy of order with notice of entry filed.	21
10-14-71	Pltf's memorandum of law filed.	22
10-15-71	Notice of appearance as atty for JOHN H. FINN filed.	23
	Continued	



## CIVIL DOCKET

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN ENCLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
10/15/71	Before Weinstein, J.-Case Called for hearing on plttf's motion for summary judgment-Motion argued & granted as to MAC ARTHUR SENIOR VILLAGE-Govt. to submit order-Case adj'd to 11/1/71			
10/15/71	Before Weinstein, J.-Case Called for motion to retain Mr. Cachianes-Motion denied-Motion re. attys' fees denied-Allowance of attvs. fees to MAC ARTHUR denied-Deft's motion to dismiss denied-Govt. to submit order.			
10/15/71	Affidavit of John H. Finn in opposition to deft's motion to limit receiver's powers filed.			24
10/20/71	By Weinstein, J.-Order of 10/19/71 denying deft MACARTHUR's motion to limit receiver's powers & granting plttf's cross-motion against said deft & directing that a judgment of foreclosure & sale be entered in favor of plttf and against said deft filed. ((P/C to attvs.))			25
10-22-71	By WEINSTEIN, J.- Order on stip filed that Henrietta Rand, Martha Barkus and Shirley Herschkowitz, as Executors of the Last Will and Testament of David Rand, Dec. are substituted in place of David Rand etc.			26
11-1-71	Before WEINSTEIN, J.- Hearing on plttf's cross-motion for summary judgment adjd to 1-6-72 at 10:00 A.M. for argument.			
11-1-71	Before WEINSTEIN, J.- Hearing on deft's motion to limit the powers of the receiver etc. adjd to 1-6-72 at 10:00 A.M. for argument.			
10-30-71	Notice of appearance as attys for deft D.C.R. Holding Corp filed.			27
11-1-71	Summons returned and filed. Louis Schiff, Village of Hempstead, County of Nassau srvd on 8-16-71; Town of Hempstead, School District #1, Disabled American Veterans Dept of N.Y. srvd 8-17-71; David Rand srvd 8-23-71; State of New York srvd 8-24-71; Omni Investing Corp., General Douglas MacArthur Village, Inc. srvd on 8-25-71; D.C.R. Holding Corp srvd 10-5-71; Sadie Schwartz srvd on 10-22-71.			28
11-29-71	By WEINSTEIN, J.- Order filed that John H. Finn, Receiver is authorized to hire and contract with qualified companies or workmen in order to make all necessary repairs to subject premises, etc. (P/C mailed to attys)			29

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DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEPENDANT	
12/8/71	Answer filed. (DCR HOLDING CORP.) with cross-claim			30
12/20/71	Deft's (VILLAGE OF HEMPSTEAD) reply to deft's (DCR HOLDING)			
	cross-claim filed.			31
12/23/71	Answer & cross-claim against County of Nassau, Town of Hempstead & School District #1 filed. (SADIE SCHWARTZ)			32
12-27-71	Notice of cross-motion and memorandum filed, for summary judgment by deft Village of Hempstead etc.(ret Jan 6, 1972)			33/34
12-29-71	By WEINSTEIN, J.- Order on stip filed substituting Michael R. Gurlides, Esq. in place of Vincent J. Flanagan as atty for defts Henrietta Rand, Martha Barkus and Shirley Hershkowitz,			35
1-3-72	Deft, County of Nassau's memorandum of law filed.			36
1-3-72	Memorandum of law of deft Estate of David Rand filed, in opposition to motion for summary judgment.			37
1-4-72	Notice of motion and memorandum filed, directing that the answers of defts County of Nassau, Town of Hempstead, Village of Hempstead Estate of David Rand, D.C.E. Holding Cor and Sadie Schwartz be stricken and granting summary judgment to plfff etc.(ret 1-6-72)			38/39
1-4-72	Notice of cross-motion for summary judgment in favor of deft Town of Hempstead etc, (ret Jan 6, 1972)			40
1-5-72	Memorandum filed, on behalf of deft The Town of Hempstead filed.			41
1-5-72	Reply of deft Town of Hempstead to cross-claim of Sadie Schwartz filed.			42
1-6-72	Deft Sadiw Schwartz' memorandum of law filed.			43
1/6/72	Before Weinstein, J.-Case Called for hearing on deft's motion to limit receiver's powers-Motion argued-Decision reserved-2wks. for supplemental briefs.			
1/6/72	Before Weinstein, J.-Case Called for hearing on deft's (VILL OF HEMPSTEAD) motion for summary judgment-Motion argued-Decision reserved-2wks. for supplemental briefs.			
1/6/72	Before Weinstein, J.-Case Called for hearing on plfff's cross-motion for summary judgment-Motion argued-Decision reserved-2wks for supplemental briefs			
1-18-72	Letter to Judge Weinstein from Saul Horowitz dated 1-14-72 filed.			44
1/24/72	Letter of 1/21/72 from U.S. Dept. of Justice filed.			45
2-4-72	By WEINSTEIN, J.- MEMORANDUM & ORDER dated 2-3-72 filed. The liens for unpaid local taxes will be afforded a priority over the mortgage lien held by the Secretary. Plfff will submit a judgment within five days. So Ordered. (P/C mailed to attys)			46

continued

## 023 CIVIL DOCKET U.S.A. V. GEN DOUGLAS MACARTHUR SENIOR VILLAGE

DATE	FILINGS-PROCEEDINGS	CLERK'S FILE		AMOUNT REPORTED IN ENCLOSURE RETURNING
		PLAINTIFF	DEFENDANT	
2-10-72	Letter to Judge Weinstein from Saul Horowitz, dated 2-9-72 filed.		47	
2-15-72	By WEINSTEIN, J.- Order filed, motion to amend decision to include a determination of the Village's motion is denied with leave to renew upon contingency states. So Ordered. (see order endorsed at foot of letter from Saul Horowitz, Esq. dated 2-9-72) (#47) (copy mailed to Saul Horowitz Esq.		==	
2-22-72	By WEINSTEIN, J.- JUDGMENT OF FORECLOSURE & SALE FILED. It is ordered that the action be dismissed as against defts "John Doe #2" through "John Doe #100 etc. and are stricken from all proceedings etc. that the name of deft "John Doe #1" is changed to read A.T.S. Properties Inc. without prejudice, that Henrietta Rand, Martha Barkus and Shirley Hershkowitz as executors etc. be substituted for deft David Rand etc. and that the default of defts is noted. that plttf have judgment for the sum of \$1,745,076.61 together with interest thereon from the date of this judgment, besides the sum of \$223.92 as taxed etc. That William D. Siegel, Esq. of 220 Old Country Road, Mineola, N.Y. 11501 is appointed Master etc. (P/C mailed to attys.)		48	
2-22-72	Bill of costs filed. Costs taxed in the sum of \$223.92. (annexed to judgment)			
2-29-72	Inventory and report of receiver, John A. Finn, filed.		49	
3-3-72	Letter to Judge Weinstein from William D. Siegel dated 2-29-72 filed.		50	
3-9-72	By WEINSTEIN, J.- JUDGMENT OF FORECLOSURE AND SALE FILED to supersede judgment entered on 2-2-72, etc. appointing Edwin H. Charmin, 10 Cutter Mill Road, Great Neck, N.Y. Master (copy mailed to Master)		51	
3-21-72	Master's Oath to sell filed.		52	
3-22-72	Notice of publication filed.		53	
3-27-72	NOTICE OF APPEAL FILED. Copy of appeal mailed to C/A and to attys et al. dated 3-30-72		54	
3-31-72	By WEINSTEIN, J.- Order filed, that the motion for a renewal of motion of Village of Hempstead to dismiss the cross-claim of D.C.R. Holding Corp. is denied. It may be renewed if the results of the Appeal warrant. SO ORDERED. (see order endorsed on foot of page to of letter from Saul Horowitz, Esq. dated 3-29-72)		55	

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
4-5-72	Order to show cause with affid of svy filed for preliminary injunction etc. (ret Apr 17, 1972)		56	
4-6-72	NOTICE OF APPEAL FILED. (Deft Village of Hempstead) (affid of mailing copies to attys attached) Copy mailed to Court of Appeals.		57	
4/14/72	Affidavit of Shirley Hershkowitz in opposition filed.		58	
4-14-72	Pltff's memorandum of law filed.		59	
4/17/72	Before Weinstein, J.-Case called for hearing on pltff's motion for t.r.o.-Motion argued-Motion granted as indicated-Pltff to submit order			
4/17/72	Affidavit of Saul Horowitz in opposition filed.		60	
4/17/72	Reply affidavit of Gilbert Henoch filed.		61	
4-17-72	Affidavit of publication filed.		62	
4/20/72	By Weinstein, J.-Order of 4/19/72 granting pltff's application for prel. inj. filed. (P/C mailed to attys.)		63	
4-28-72	MASTER'S REPORT OF SALE FILED. (P/C mailed to attys)		64	
5-8-72	Record on appeal certified and given to Mr. Joseph Rosenzweig U.S. Atty for delivery to Court of Appeals, Receipt in file.			
5/15/72	Certified copy of index to record on appeal acknowledging receipt of record by C. of A. filed.		65	
5/25/72	Notice of motion ret 6/7/72 for an order settling receiver's account, etc. filed.		66	
6/5/72	Affidavit of Joseph Rosenzweig filed.		67	
6/6/72	By Weinstein, J.-Order setting case down for hearing & directing that counsel arrange date with chambers filed. (See order endorsed on within of paper #67) (Copy of order mailed to parties)			
6/7/72	Before Weinstein, J.-Case called for hearing on receiver's motion for an order settling account-Order to be submitted or \$6,600.00 & fee of \$2500.00 to atty for receiver.			
6/18/72	Notice of motion ret. 6/28/72 for an order confirming report of sale filed.		68	
6-19-72	By WEINSTEIN, J.- Order filed that the account of John H. Finn Receiver is confirmed and that the receiver out the moneys remaining in his hands in the amount of *98,513.10 pay to himself as commissions the sum of \$6,702.65; that after the payment of aforesaid sums, the receiver pay the palabce remaining to pltff; that receiver turn over to pltff all books, records etc.; that upon compliance with the terms of this order etc, receiver John H. Finn is discharged etc. (P/C mailed to attys)		69	

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AM REPO LMOL RET
		PLAINTIFF	DEFENDANT	
6-23-72	Receipt filed acknowledging receipt of check \$2,500.00 in full payment of fees as atty to John H. Finn as receiver; and \$6,702.65 as for commissions and allowances and compensation as Receiver.		70	
6/28/72	Before Weinstein, J. - Case called for hearing on plttf's motion for an order confirming master's report of sale - Motion granted - Govt to submit order.			
7-3-72	By WEINSTEIN, J. - Order of 6-29-72 filed, confirming Master's report of 'Sale.		71	
1-26-73	Certified copy of order and copy of opinion/received from C of A and filed reversing the action of the district court and remanding action to district court for further proceedings in accordance with the opinion of the C of A with the costs to be taxed against the appellees.	72		
2-15-73	By WEINSTEIN, J. - Order adjourning hearing of the cross-claims until 60 days after adjudication of the Supreme Court filed.		73	
4-24-73	Record on appeal received from C of A. Acknowledgment mailed to Clerk.			
6/26/73	Notice of motion ret 7/30/73 & memo of law in support of for summary judgement filed.		74/75	
6-28-73	By WEINSTEIN, J. - Order dtd 6-27-73 setting 7-26-73 at 9:30 A.M. at Westbury for hearing on motion filed on document #74, (parties notified).		--	
7-10-73	Notice of motion to permit defts Henrietta Rand, Martha Barkus and Shirley Hershkowitz to amend their answer, etc. filed. (ret 7-26-73 at 10 A.M.).		76	
7-26-73	Before WEINSTEIN, J. - Case called for hearing on defts motion permitting defts Rand, Barkus & Hershkowitz to amend their answer. Motion argued. Decision reserved.			
7-30-73	Copy of letter from Matthew Feinberg dtd 7-12-73 filed.		77	
8-15-73	Memorandum of law in opposition to motion to amend answers filed.		78	
9/6/73	Memorandum of Law in Support of the Motion of the deft <del>Gen. Douglas MacArthur Senior Village of Hempstead for Summary Judgment</del> filed.		79	
10-11-73	By WEINSTEIN, J. - Memorandum and order dtd 10-10-73 granting motion of Estate of David Rand to amend answer, etc. filed.		80	



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

- against -

GENERAL DOUGLAS MacARTHUR  
SENIOR VILLAGE, INC.,  
STATE OF NEW YORK, COUNTY OF  
NASSAU, TOWN OF HEMPSTEAD,  
VILLAGE OF HEMPSTEAD, SCHOOL  
DISTRICT #1, DISABLED AMERICAN  
VETERANS DEPARTMENT OF NEW YORK,  
LOUIS SCHIFF, OMNI INVESTING  
CORP., DAVID RAND, SADIE SCHWARTZ,  
D.C.R. HOLDING CORP., "JOHN DOE #1"  
through "JOHN DOE #100", inclusive,  
such names being fictitious and  
unknown to plaintiff, the persons  
or parties intended being tenants,  
occupants, persons, corporations,  
or other legal entities, if any,  
having or claiming an interest  
in or lien upon the premises  
described in the complaint,

COMPLAINT

Index No.

71 C 1023

Defendant .

----- X

The plaintiff, complaining of the defendants, by  
ROBERT A. MORSE,  
its attorney, ~~XXXXXXXXXXXX~~ United States Attorney for  
the Eastern District of New York, respectfully shows to the  
Court and alleges:

1. That jurisdiction is conferred upon this  
Court pursuant to Title 28, United States Code §1345.

2. That this action is brought on behalf of the  
Secretary of Housing and Urban Development,  
an agency of the United States of America.

M-33  
Rev.  
2/2/70

a note bearing the said date, wherein and whereby the said defendant duly promised to pay to the UNITED STATES OF AMERICA, acting by and through the Secretary of Housing and Urban Development the sum of \$ 1,774,000.00 together with interest at the rate of three per centum per annum to be paid \$5,815 on the 1st day of May 1968, and a like sum of \$ 5,815 on the 1st day of each and every month thereafter until the 1st day of May 2016, when the entire unpaid principal balance with interest thereon shall become due and payable.

ALL that certain plot, piece or parcel of land, situate, lying and being in the Incorporated Village of Hempstead, Town of Hempstead, County of Nassau and State of New York being more particularly bounded and described as follows:

**M-33:**



Running Thence South 84 degrees 58 minutes 50 seconds East 346.77 feet to the Westerly side of Horse Brook, Property of the County of Nassau;

Thence along the last mentioned land, the following 5 courses and distances:

- (1) South 10 degrees 45 minutes 00 seconds West 81.75 feet;
- (2) South 27 degrees 14 minutes 00 seconds West 16.894 feet;
- (3) South 44 degrees 24 minutes 30 seconds West 67.732 feet;
- (4) South 27 degrees 14 minutes 00 seconds West 56.876 feet;
- (5) South 15 degrees 38 minutes 00 seconds West 134.23 feet to the Northerly side of land now or formerly of H. M. G. Realty Co., Inc.;

Thence along the Northerly side of the last mentioned land North 77 degrees 32 minutes 29 seconds West 124.35 feet to the Easterly side of land now or formerly of Clarke;

Thence along the land now or formerly of Clarke the following 2 courses and distances;

- (1) North 11 degrees 23 minutes 09 seconds East 50.00 feet;
- (2) North 77 degrees 32 minutes 21 seconds West 159.37 feet to the Easterly side of Clinton Street;

Thence along the Easterly side of Clinton Street, North 12 degrees 33 minutes 46 seconds East 249.64 feet to the point or place of BEGINNING.

Together with all right, title, and interest of the owner thereof, if any, in and to the land lying in the streets and road in front of and adjoining said premises, to the center line thereof.

Together with all fixtures and articles of personal property annexed to, installed in, or used in connection with the mortgaged premises, all as is more fully set forth in said mortgage.

5. That said mortgage was duly recorded in the Office of the Clerk of the County of Nassau, on the 9th day of May 1966, in Liber 7910 of Mortgages, at Page 458.

6. That the said mortgage provided that at the option of the holder thereof the whole of the principal sum and interest thereon shall become immediately due and payable after default in payment of any aggregate monthly payment provided for in said note and mortgage, ~~prior to the~~

7. That the defendants and each of them, have failed to comply with the terms, and conditions of said note and mortgage, by failing and omitting to pay ~~xxxxxx~~  
all taxes, water charges and assessments against the  
~~xx~~  
mortgaged premises and more than thirty days have elapsed  
~~xx~~  
since notice and demand that said unpaid taxes and water  
~~charges be paid.~~

9. That in order to protect its security, the plaintiff has been and may be compelled to pay taxes, assessments and water rates which are, have become, or may become liens on the mortgaged premises, and other charges affecting the premises, and the plaintiff requests that any sum so paid by plaintiff shall be added to the sum otherwise due and be deemed secured by said mortgage and adjudged a valid lien on the premises herein described and that the same be paid to the plaintiff from the proceeds of the foreclosure sale to be had herein.

**M-33**

11. That the plaintiff requests that in the event this action proceeds to judgment of foreclosure and sale, the said premises be sold in one parcel, subject to the following: any state of facts which an accurate survey would show; easements, covenants, restrictions, or reservations, if any; zoning restrictions and any amendments there-to according to law, and now in force; existing violations and orders of the appropriate departments of any city, town, or village, if any; the physical condition of the premises at the time of closing; and without any apportionments or adjustments of any kind.

12. On information and belief the defendants GENERAL DOUGLAS MAC ARTHUR SENIOR VILLAGE, INC., OMNI INVESTING CORP.

were at all the times herein mentioned and now are corporations organized and existing under the laws of the State of New York.

13. The STATE OF NEW YORK is made a party defendant herein to bar it from any interest it may have in the mortgaged premises by virtue of unpaid corporation or other franchise taxes that may be due and a lien thereon from the defendant, GENERAL DOUGLAS MAC ARTHUR SENIOR VILLAGE, INC.

13a. The COUNTY OF NASSAU, TOWN OF HEMPSTEAD, VILLAGE OF HEMPSTEAD and SCHOOL DISTRICT #1 are made defendants herein to bar them from any right, title or interest that they may have in the mortgaged premises, or some part thereof, by virtue of any unpaid taxes, water charges or assessments that may be due and liens thereon.

14. Upon information and belief each of the defendants herein has or claims to have some interest in, or lien upon, the mortgaged premises or some part thereof, which interest or lien, if any, is subject and subordinate to the lien of the plaintiff's mortgage being foreclosed herein.

WHEREFORE, plaintiff demands judgment that the defendants and each of them and all persons claiming under

them or any of them, subsequent to the commencement of this action and the filing of the notice of pendency thereof, be forever barred and foreclosed of and from all estate, right, title, interest, claim, lien, and equity of redemption of, in and to the said mortgaged premises and each and every part and parcel thereof; that the said premises may be decreed to be sold in one parcel according to law and as herein requested; that the money arising from the sale thereof may be brought into Court; that plaintiff may be paid the amount due on the note and mortgage, as hereinbefore set forth, with interest to the time of such payment and the expenses of such sale, together with the costs and disbursements of this action, and together with any moneys which have been or may be advanced by the plaintiff to protect the security afforded by said mortgage with interest upon said advances from date of such payment, so far as the amount of such moneys properly applicable thereto will pay the same; that this Court forthwith appoint a receiver of the rents and profits of said premises during the pendency of this action with the usual powers and duties; that the defendant GENERAL DOUGLAS MAC ARTHUR SENIOR VILLAGE, INC.

may be adjudged to pay the whole residue or so much thereof as the Court may determine to be just and equitable of the debt remaining unsatisfied, after a sale of the mortgaged premises and the application of the proceeds, pursuant to the directions contained in such judgment, and that the plaintiff may have such other and further relief or both, in the premises as may be just and equitable.

ROBERT A. MORSE  
~~XXXXXXXXXXXX~~  
United States Attorney  
Eastern District of New York  
Attorney for Plaintiff,  
225 Cadman Plaza East  
Brooklyn, New York 11201

By: Joseph Rosenzweig  
Assistant U. S. Attorney

[CAPTION OMITTED]

ANSWER

The defendant COUNTY OF NASSAU, by its attorney, JOSEPH JASPAN, County Attorney of Nassau County, answering the complaint herein, respectfully shows to the Court and alleges as follows:

1. Denies all of those allegations of paragraph "1" of the complaint herein as pertain to the Court's jurisdiction in this matter.

2. That the defendant COUNTY OF NASSAU is without knowledge or information sufficient to form a belief as to the truth of those allegations contained in paragraphs "3", "4", "5", "6", "7", "10" and "12" of the complaint.

3. Denies so much of paragraph "8" of the complaint herein as alleges that there is due and owing to the plaintiff the sum of \$1,717,542.91 with interest from the 1st day of July, 1971.

4. Denies all of those allegations as contained in paragraph "13a" of the complaint herein as pertain to the defendant COUNTY OF NASSAU.

5. Denies all those allegations of paragraph "14" of the complaint herein insofar as said allegations allege that the lien of the defendant COUNTY OF NASSAU is subject and subordinate to the lien of the plaintiff's alleged mortgage.

AS AND FOR AN AFFIRMATIVE DEFENSE

6. That pursuant to the provisions of 12 U.S.C.A. §§ 1706b, 1714 and 1741, as they pertain to the real property

which is the subject of this action, it is specifically made and provided that said real property is not exempt from taxation by any state or political subdivision thereof, namely the defendant COUNTY OF NASSAU, and that therefore the alleged mortgage of the plaintiff has no priority of lien over that lien which has accrued to the defendant COUNTY OF NASSAU by way of unpaid real estate taxes.

WHEREFORE, the defendant COUNTY OF NASSAU demands judgment that the Court determine the lien priorities among the defendants herein and that it be ordered and adjudged that the lien of said defendant COUNTY OF NASSAU for unpaid taxes is prior and superior to the lien of the plaintiff upon its alleged mortgage, that upon the sale of the subject premises and the money therefrom being brought into Court, that said defendant COUNTY OF NASSAU be paid the amount which is due to it for all real estate taxes due and owing and unpaid up to the date of the sale of said premises, that said defendant COUNTY OF NASSAU have such other and further relief as may be just and equitable.

JOSEPH JASPAH  
County Attorney of Nassau County

by:

Louis A. Rossano  
Deputy County Attorney  
Executive Building  
Mineola, N.Y. 11501  
(516) 535-3605

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
-----

UNITED STATES OF AMERICA,

Plaintiff,

-against-

GENERAL DOUGLAS MacARTHUR  
SENIOR VILLAGE, INC.,  
STATE OF NEW YORK, COUNTY OF  
NASSAU, TOWN OF HEMPSTEAD,  
VILLAGE OF HEMPSTEAD, SCHOOL  
DISTRICT #1, DISABLED AMERICAN  
VETERANS DEPARTMENT OF NEW YORK,  
LOUIS SCHIFF, OMNI INVESTING CORP.,  
DAVID RAND, SADIE SCHWARTZ,  
D.C.R. HOLDING CORP., "JOHN DOE #1"  
through "JOHN DOE #100", inclusive,  
such names being fictitious and  
unknown to plaintiff, the persons  
or parties intended being tenants,  
occupants, persons, corporations,  
or other legal entities, if any,  
having or claiming an interest  
in or lien upon the premises  
described in the complaint,

ANSWER OF DEFENDANT  
VILLAGE OF HEMPSTEAD

INDEX NO. 71 C 1023

Defendants.  
-----

The defendant, VILLAGE OF HEMPSTEAD, for its answer to  
the complaint, respectfully alleges:

1. Denies knowledge or information sufficient to form a  
belief as to each and every allegation contained in paragraphs  
designated and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13  
and 14.

AFFIRMATIVE DEFENSE

2. The taxes, water charges and assessments imposed  
upon the real property which is the subject matter of this litigation  
by the Village of Hempstead, a municipal corporation in the County  
of Nassau and State of New York, are exempt from the claim of the  
plaintiff that the mortgage of said plaintiff has priority over  
said local taxes, water charges or assessments imposed by this  
defendant.

3. That the mortgage of the plaintiff in this action is subordinate to the taxes, water charges or assessments imposed upon the real property in this action by the defendant Village of Hempstead.

WHEREFORE, the defendant Village of Hempstead demands judgment, dismissing the complaint with costs.

SAUL HOROWITZ  
Corporation Counsel for the  
Defendant Village of Hempstead  
Office Address  
250 Fulton Avenue  
Hempstead, New York 11550  
516 486-4500

By: 

SAUL HOROWITZ



[CAPTION OMITTED]

ANSWER

The defendant, Town of Hempstead, by Howard E. Levitt, Town Attorney for the Town of Hempstead, Daniel P. McCarthy, Esq., of counsel, as and for an answer to plaintiff's complaint herein states:

1. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "I", "II", "III", "IV", "V", "VI", "VIII", "X", "XI", "XII".
2. Denies each and every allegation contained in paragraph "VII".
3. Admits the allegations contained in "XIII" "A" except that defendant, Town of Hempstead, denies that the lien of its real estate taxes as lawfully assessed may be barred by this action.
4. Admits the allegations contained in paragraph "XIV" except that the defendant, Town of Hempstead denies that the liens of its real estate taxes as lawfully assessed are subject or subordinate to the lien of the plaintiff's mortgage being foreclosed herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

5. That pursuant to the United States Code Title 12 Section 1749A, the secretary of Housing and Urban Development is specifically directed to pay taxes on property acquired by that agency and it's mandated that the acquisition of property shall not deprive the State or local governments of the power to tax.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

6. Upon the information and belief, the priority of the Town of Hempstead's levy of real estate taxes is expressly recognized in the pertinent provisions of the mortgage herein sought to be foreclosed.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

7. That at all times herein mentioned in plaintiff's complaint, the defendant, Town of Hempstead, was and still is a municipal corporation duly organized and existing under the laws of the State of New York for the purpose of exercising the powers and discharges of the duties of local government and the administration of public affairs imposed upon it by law.

8. That pursuant to the laws of the State of New York applicable thereto, the Town of Hempstead through the office of its Receiver of Taxes shall collect all state, county, town, school districts, and special districts taxes levied or assessed upon any property subject to taxation within the Town of Hempstead or the state, county, town, school districts or special districts or parts thereof in such town.

9. That one-half of all the taxes upon real estate except school district taxes shall be due and payable on the 1st day of January and the remaining and final one-half of such taxes on such real estate shall be due and payable on the 1st day of July, and all such taxes shall be and become liens on the real estate affected thereby and shall remain such liens until paid.

10. That one-half of all school taxes upon real estate shall be due and payable on the 1st day of October and the remaining and final one-half of such taxes on real estate shall be due and payable on the 1st day of the following April and all the taxes shall become liens on the real estate affected

when they become due and payable and shall remain such liens until paid.

11. That the real property described in paragraph "IV" of the plaintiff's complaint is known and designated as and by Section 34 Block 245 Lot 575 on the Land and Tax Map of Nassau County and carried as such on the assessment rolls of the Town of Hempstead.

12. That the claim of plaintiff to priority of lien over the lien of the general tax levy against the real property herein described constitutes a usurpation of authority under the sovereign of the State of New York and its Civil Divisions which priority, if determined, will necessarily result in a total destruction of state and local governments and seriously unbalance the fiscal affairs of local tax authorities and deprive them of the necessary funds for education, support of fire departments, police departments, public roads, courts of justice, public health, public welfare.

WHEREFORE, defendant demands judgment that the complaint of the plaintiff herein be dismissed together with costs and disbursements of this action and such other and further relief as to this court may seem just and proper.

HOWARD E. LEVITT, Esq.  
Town Attorney and Attorney  
for Defendant, Town of  
Hempstead, Hempstead Town  
Hall, Town Hall Plaza, Main  
Street, Hempstead, New York

FEB 19 1974

FEB 18 1974

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

SECOND AMENDED  
ANSWER

Plaintiff

Index No. 71C1023

-against-

GENERAL DOUGLAS Mac ARTHUR SENIOR  
VILLAGE, INC et al

Defendants

HENRIETTA RAND, MARTHA BARKUS and SHIRLEY HERSHKOWITZ,  
as Executors of the last will and testament of the defendant,  
DAVID RAND, answering the complaint herein, respectfully  
allege:

FIRST: Deny having any information or knowledge sufficient to  
form a belief as to the truths of the allegations set forth  
in paragraphs numbered "7", "8", "9" and "10" in the complaint.  
SECOND: Deny each and every allegation set forth in paragraph  
numbered "14" of the complaint herein.

FOR A FIRST, SEPARATE AND COMPLETE DEFENSE  
AND BY WAY OF COUNTERCLAIM TO THE COMPLAINT  
HEREIN

THIRD: That heretofore and subsequent to the date of the  
execution of the mortgage being foreclosed herein, liens for  
unpaid Town, County and State Taxes on the real property set  
forth in paragraph "4" of the complaint herein were sold  
to DAVID RAND, one of the named defendants herein.

FOURTH: That thereafter and on the 27th day of August 1971,  
said DAVID RAND died, a resident of Nassau County, New York,

BEST COPY AVAILABLE

leaving a Last Will and Testament which was admitted to probate in the Surrogates Court of Nassau County on the 10th day of September 1971.

FIFTH: That by virtue of the provisions of the said Last Will and Testament of DAVID RAND, Henrietta Rand, Martha Barkus and Shirley Hershkowitz became the owners and holders of said real property tax liens.

SIXTH: That said tax liens remain open and unpaid and are still valid liens against the property set forth in the complaint.

SEVENTH: That said liens are superior and prior in right to the lien of the plaintiff herein.

AS AND FOR A SECOND, SEPARATE, DISTINCT  
AND COMPLETE DEFENSE TO THE ALLEGED  
CAUSE OF ACTION CONTAINED IN THE COMPLAINT,  
DEFENDANTS ALLEGE:

EIGHTH: Upon information and belief certain village taxes were assessed upon or charged against the property which is the subject of this action, in the amount of \$21,843.75 by or on behalf of the defendant Village of Hempstead (hereinafter referred to as the "Village") in and for the village tax year 1970.

NINTH: Upon information and belief the aforesaid village taxes so assessed upon and charged against the property which is the subject of this action for the village tax year 1970, were not paid when the same became due and payable.

TENTH: On or about the 4th day of May 1971, the lien of the village taxes for the year 1970 assessed upon and charged against the property which is the subject of this action, by the village and unpaid as aforesaid was sold by the village to defendants, predecessor in title, DAVID RAND under and pursuant to the

provisions of the Village Law and the Real Property Actions and Proceedings Law of the State of New York, in such cases made and provided.

ELEVENTH: The lien of the unpaid village taxes for the tax year 1970 so assessed upon and charged against the property which is the subject of this action by the village, is superior to the lien of the mortgage which plaintiff seeks to foreclose in this action by reason of the provisions of 12 U.S.C. Sections 1706-b, 1714, 1733, 1741, 1747 and 1750-c and other statutes and laws of the United States of America, as well as the laws and statutes of the State of New York in such cases made and provided.

AS AND FOR A FIRST CROSS-CLAIM AGAINST  
THE DEFENDANTS TOWN OF HEMPSTEAD AND  
COUNTY OF NASSAU

TWELFTH: The defendants, Henrietta Rand, Martha Barkus and Shirley Hershkowitz, repeat, reiterate and reallege each and every allegation, as if the same had been herein set forth at length as contained in paragraphs "3", "4", "5", "6", and "7".

THIRTEENTH: Upon information and belief, at all times hereinafter mentioned, the defendant General Douglas MacArthur Senior Village, Inc. was and still is a membership corporation organized and existing under and pursuant to the Membership Corporation Law of the State of New York, and organized for benevolent and charitable purposes according to the Real Property Tax Law of the State of New York, as follows: To provide on a non-profit basis rental housing and related facilities and services specially designed to meet the physical and social needs of the aged and for elderly persons and to meet the physical and social needs of the aged and to contribute to their health, happiness and usefulness.

FOURTEENTH: At all times hereinafter mentioned, GENERAL DOUGLAS MacARTHUR SENIOR VILLAGE INC., was and still is the owner in fee simple and in possession of the property which is the subject matter of this action.

FIFTEENTH: At all times hereinafter mentioned, the property which is the subject matter of this action was and still is used and occupied by defendant GENERAL DOUGLAS MacARTHUR SENIOR VILLAGE INC. for the benevolent and charitable uses and purposes hereinbefore set forth.

SIXTEENTH: At all times hereinafter mentioned, the property which is the subject matter of this action was and still is exempt from taxes, charges and assessments imposed and levied by the Village of Hempstead and the County of Nassau for and on behalf of the Town of Hempstead and the local school districts for the 1969/70 and the 1970 tax years pursuant to and by virtue of the provisions of the Real Property Tax Law of the State of New York.

SEVENTEENTH: By reason of the foregoing, the taxes, charges and assessments imposed and levied by the County of Nassau and the Village of Hempstead for and on behalf of themselves and the school district for such tax years against the property which is the subject matter of this action, were improperly and illegally assessed, charged and levied and the liens thereof are illegal, void and unenforceable.

AS AND FOR A SECOND CROSS-CLAIM AGAINST THE  
DEFENDANTS, TOWN OF HEMPSTEAD AND COUNTY OF  
NASSAU

The defendants, Henrietta Rand, Eartha Barkus and Shirley Hershkowitz, repeat and reiterate each and every allegation contained in paragraphs "3", "4", "5", "6", and "7" herein

as if the same had been herein set forth at length.

EIGHTEENTH: The lien of the County Tax for the year 1970 and School Tax for the tax year 1969/70 imposed, levied, and assessed against the property which is the subject matter of this action by the defendant, Nassau County, for and on behalf of itself, the defendant, Town of Hempstead and the school district is deemed under and pursuant to the laws of the State of New York, in such cases made and provided, to be superior to the lien of any and all prior recorded mortgages encumbering the property which is the subject matter of this action, including the aforesaid mortgage lien of the plaintiff.

NINETEENTH: The Nassau County Treasurer when he sold to the decedent DAVID RAND, the lien of the 1970 County Tax and the 1969/70 School Tax, the subject of this action as against the premises herein, represented and warranted that the said tax lien was superior to the lien of any and all prior recorded mortgages, including the aforesaid mortgage of the plaintiff.

TWENTIETH: That Section 1168 of the Real Property Tax Law provides that the issuance of the tax lien certificate shall be presumptive evidence as to the title of the purchaser thereof and the regularity of all proceedings.

TWENTY-FIRST: That at all times hereinafter set forth Section 5-54.0 of the Nassau County Administrative Code provided in part as follows:

Every such conveyance shall be attested by the County Treasurer and the seal of the County Treasurer shall be attached thereto. When so executed, the conveyance shall be presumptive evidence that:

1. The sale of the tax lien was regular.
2. All proceedings prior to such sale, including the assessing of the lands affected by such tax lien were regular.



TWENTY-SECOND: The defendants, predecessors in title, DAVID RAND, when he purchased the tax lien as aforesaid so encumbering the property which is the subject matter of this action, relied upon the aforesaid provisions, representations and warranties, and that the said lien of said taxes were superior to all prior recorded mortgages including the mortgage of the plaintiff.

TWENTY-THIRD: If the relief which plaintiff seeks in this action to the effect that the aforesaid mortgage of plaintiff is superior to the lien of the County and school taxes and the Village taxes imposed, levied and assessed by the County of Nassau, the Town of Hempstead and the Village of Hempstead against the property which is the subject matter of this action for the County tax year 1970 and the school tax year 1969/70 is granted, the lien of the aforesaid taxes so purchased by said DAVID RAND will be inferior and subordinate to the lien of plaintiffs mortgage in controvention of its aforesaid sections of the Real Property Tax Law and the Nassau County Administrative Code and the aforesaid representations and warranties attaching to the said tax liens for the County Tax and Village taxes as aforesaid which have been levied against the property which is the subject matter of this action.

TWENTY-FOURTH: If the relief which plaintiff seeks in this action that the lien of its aforesaid mortgage is superior to

the lien of the County Taxes and the Village Taxes imposed, assessed and levied against the property which is the subject matter of this action is granted, the defendants, Henrietta Rand, Martha Barkus and Shirley Hershkowitz will be damaged in the amount of \$57,354.72.

AS AND FOR A FIRST CROSS-CLAIM  
AGAINST DEFENDANT VILLAGE OF  
HEMPSTEAD, DEFENDANTS, HENRIETTA  
RAND, MARTHA BARKUS AND SHIRLEY  
HERSHKOWITZ, ALLEGE:

Repeat and reiterate each and every allegation contained in paragraphs numbered 8th, 9th, 10th, 11th, 12th, 13th, 14th and 15th of the Answer as if the same had been herein set forth at length.

At all times hereinafter mentioned, the property which is the subject of this action was and still is exempt from taxes, charges and assessments imposed and levied by the Village for the tax year 1970 under, pursuant and by virtue of the provisions of Sections 420 and 422 of the Real Property Tax Law of the State of New York.

By reason of the foregoing the taxes, charges and assessments imposed and levied by the Village for the tax year 1970 against the property which is the subject of this action, were improperly and illegally assessed, charged, imposed and levied and the lien thereof is illegal, void and unenforceable.

AS AND FOR A SECOND CROSS-CLAIM  
AGAINST DEFENDANT, VILLAGE OF  
HEMPSTEAD, DEFENDANTS, HENRIETTA  
RAND, MARTHA BARKUS AND SHIRLEY  
HERSHKOWITZ, ALLEGE:

Repeat and reiterate each and every allegation contained in paragraphs numbered 8th, 9th, 10th, 11th, 12th, 13th, 14th and 15th of this Answer as if the same had been herein set forth at length.

The lien of the Village tax for the tax year 1970 imposed, levied, charged and assessed against the property which is the subject of this action by the Village as aforesaid, is deemed under and pursuant to the laws of the State of New York, in such cases made and provided, to be superior to the lien of any and all prior recorded mortgages encumbering the property which is the subject of this action, including the aforesaid mortgage lien of the plaintiff.

The Village, when it sold to defendants, predecessor in title, the lien of the Village tax for the tax year 1970, the subject of this action as aforesaid, represented and warranted that the said tax lien was superior to the lien of any and all prior recorded mortgages, including the aforesaid mortgage of plaintiff.

Now and at all times hereinafter mentioned, Section 1454, subdivision 2 and Section 1464, subdivision 3 of the Real Property Tax Law of the State of New York, respectively provided and still provides as follows:

"Section 1454. Subdivision 2.

Each purchaser at such tax sale shall pay the amount of his bid to the village treasurer within ten days after the sale. Upon such payment the treasurer shall give to the purchaser a certificate in writing describing the real property purchased and the sum paid therefor. Each such certificate shall be presumptive evidence that the sale and all proceedings prior thereto, including the assessment of the land and the levying of the tax were regular and according to the provisions of this section and of all laws relating thereto."

"Section 1464, Subdivision 3.

If the real property described in such notice is not redeemed within the time limited, the village treasurer shall, upon written application and the surrender of the certificate of sale together with proof of service by mail of the notice to redeem, or upon application by the board of trustees of the village with such proof of service, execute and deliver to the purchaser or village a conveyance of the real property so sold, the description of which shall include a specific statement of whose title or interest is thereby conveyed, as appears on the record, which conveyance shall vest in the grantee an absolute estate in fee, subject, however, to all claims the village, county or state may have thereon for taxes, liens or encumbrances."

Defendant, predecessor in title when he purchased, as aforesaid, the lien of the Village taxes for the year 1970 so encumbering the property which is the subject of this action, relied upon the aforesaid provisions of the Real Property Tax Law of the State of New York, and that the said lien of said village tax was superior to all prior recorded mortgages including the mortgage of plaintiff.

If the relief which plaintiff seeks in this action that the aforesaid mortgage of plaintiff is superior to the lien of the village taxes imposed, levied, charged and assessed by the village against the property which is the subject of this action for the tax year 1970 is granted, the lien of the aforesaid village tax for the tax year 1970 so purchased by defendant, predecessor in title as aforesaid, will be inferior and subordinate to the lien of plaintiff's said mortgage in controvention of the aforesaid sections of the Real Property Tax Law and the aforesaid representations and warranties attaching to the said tax lien for the village taxes for the tax year 1970 so assessed, charged, levied and imposed against the property which is the subject of

THIS action.

If the relief which plaintiff seeks in this action that the lien of its aforesaid mortgage is superior to the lien of the village taxes for the tax year 1970 imposed, assessed, charged and levied against the property which is the subject of this action, is granted, defendants will be damaged in the amount of \$21,843.75.

WHEREFORE, the defendants, Henrietta Rand, Martha Barkus and Shirley Hershkowitz demand judgment:

1. Dismissing the complaint.
2. Declaring that the lien of the County taxes for the tax year 1970 and the School year 1969/70 imposed, assessed and levied against the property which is the subject matter of this action is superior to the lien of the mortgage which plaintiff seeks to foreclose in this action.
3. Declaring that the property which is the subject matter of this action be and the same is exempt from the payment of any County, School or Village taxes levied as aforesaid and directing that the defendants, County of Nassau, Town of Hempstead and Village of Hempstead reimburse, repay and restore to the defendants, Henrietta Rand, Martha Barkus and Shirley Hershkowitz any and all sums which they have expended in purchasing the tax liens for the aforesaid taxes.
4. If the relief which plaintiff seeks in this action that the lien of its said mortgage is superior to the County, school and village taxes is granted, that the said defendants recover from the County of Nassau, Town of Hempstead and Village of Hempstead the sum of \$79,198.47 together with interest from the date of sales of the said liens in such proportion as each of said

defendants has received such sum.

5. That the defendants have such other and further relief as to the court may seem just and proper together with the costs and disbursements of this action.

Michael P. Curlides  
Attorney for Henrietta Rand,  
Martha Darkus and Shirley  
Hershkowitz  
194 Old Country Road, Mineola, N.Y.

UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-Plaintiff

-against-

GENERAL DOUBLAS MacARTHUR SENIOR  
VILLAGE, INC., et al

-Defendants

Civil Action  
File #71 C 1023

ANSWER OF DEFENDANT  
SADIE SCHWARTZ

Defendant, SADIE SCHWARTZ, by her attorney, STANLEY BEALS  
answering the complaint herein respectfully shows and alleges the  
following:

1. Denies each and every allegation contained in paragraphs  
numbered 7, 9, and 14 of the complaint.

2. Denies knowledge or information sufficient to form a  
belief as to the allegations contained in paragraphs numbered 2,  
3, 4, 5, 6, 8, 9, 10, 12, 13 and 13a of the complaint.

AS AND FOR A FIRST, SEPARATE, DISTINCT AND  
COMPLETE DEFENSE TO THE ALLEGED CAUSE OF  
ACTION CONTAINED IN THE COMPLAINT, DEFENDANT  
SADIE SCHWARTZ ALLEGES:

3. Upon information and belief certain County and School  
Taxes were assessed upon or charged against the property which  
is the subject of this action for the County Tax Year 1969 and  
the School Tax Year 1968/1969. That said taxes were assessed by  
or on behalf of the Defendants COUNTY OF NASSAU, TOWN OF HEMPSTEAD,  
and SCHOOL DISTRICT #1.

4. Upon information and belief the 1969 2nd half County  
Tax and the 1968/1969 2nd half School Tax as assessed and charged  
upon the property which is the subject of this action, were not  
paid when the same became due and payable.

5. That on or about February 16, 1970, the liens of the 1969 County Tax 2nd Half and the 1968/1969 School Tax 2nd Half as assessed against the property which is the subject of this action were sold by the Nassau County Treasurer to the Defendant SADIE SCHWARTZ pursuant to the Real Property Tax Law of the State of New York, the Nassau County Charter and the Nassau County Administrative Code for the sums of \$8,906.22 and \$15,398.97 respectively.

6. That the lien of said unpaid County Taxes and School Taxes as assessed and charged against the property which is the subject of this action, is superior to the lien of the mortgage which Plaintiff seeks to foreclose in this action by reason of the provisions of 12 U.S.C. Sections 1706-b, 1714, 1733, 1741, 1747 and 1750-c and 28 U.S.C. Section 1444 and 2410 as well as other statutes and laws of the United States of America and statutes and laws of the State of New York in such cases made and provided.

AS AND FOR A FIRST CROSS-CLAIM AGAINST THE  
DEFENDANTS COUNTY OF NASSAU, TOWN OF HEMPSTEAD  
AND SCHOOL DISTRICT #1, ON BEHALF OF THE DEFEN-  
DANT SADIE SCHWARTZ

7. Said Defendant repeats, reiterates and realleges each and every allegation, as if the same had been herein set forth at length as contained in Paragraphs numbered 3, 4, 5 and 6.

8. Upon information and belief, at all times hereinafter mentioned, defendant GENERAL DOUGLAS MacARTHUR SENIOR VILLAGE, INC. was and still is a membership corporation organized and existing under and pursuant to the Membership Corporation Law of the State of New York, and organized for benevolent and charitable purposes as such terms are used and employed in the Real Property Tax Law of the State of New York, to-wit: To provide on a non-profit basis rental housing and related facilities and services specially designed to meet the physical and social needs of the aged and for elderly families and elderly persons and to meet the physical and social needs of the aged and to contribute to their health, happiness and usefulness.



9. At all times hereinafter mentioned, GENERAL DOUGLAS MacARTHUR SENIOR VILLAGE, INC., was and still is the owner in fee simple and in possession of the property which is the subject of this action.

10. At all times hereinafter mentioned, the property which is the subject of this action was and still is used and occupied by Defendant GENERAL DOUGLAS MacARTHUR SENIOR VILLAGE, INC. for the benevolent and charitable uses and purposes hereinbefore set forth.

11. At all times hereinafter mentioned, the property which is the subject of this action was and still is exempt from taxes, charges and assessments imposed and levied by the County of Nassau for and on its behalf and on behalf of the Town of Hempstead and School District #1 for the County Tax Year 1969 and the School Tax Year 1968/1969 pursuant and by virtue of the provisions of Article 4 of the Real Property Tax Law of the State of New York.

12. By reason of the foregoing, the taxes, charges and assessments imposed and levied by the County of Nassau for and on behalf of itself, the Town of Hempstead and School District #1 for the County Tax Year 1969 and School Tax Year 1968/1969 against the property which is the subject of this action, were improperly and illegally assessed, charged, imposed and levied and the lien thereof is illegal, void and unenforceable.

AS AND FOR A SECOND CROSS-CLAIM AGAINST THE  
DEFENDANTS, COUNTY OF NASSAU, TOWN OF HEMPSTEAD,  
AND SCHOOL DISTRICT #1 ON BEHALF OF THE DEFEN-  
DANT SADIE SCHWARTZ

13. Repeats and reiterates each and every allegation contained in paragraphs 3, 4, 5, 6, 8, 9, 10 and 11 of this answer as if the same had been herein set forth at length.

14. The lien of the County Tax for the year 1969 and School Tax for the Tax Year 1968/1969 imposed, levied, charged and assessed against the property which is the subject of this action by the Defendant Nassau County, for and on behalf of itself,

The Defendant Town of Hempstead and School District #1 as aforesaid, is deemed under and pursuant to the laws of the State of New York, in such cases made and provided, to be superior to the lien of any and all prior recorded mortgages encumbering the property which is the subject of this action, including the aforesaid mortgage lien of the Plaintiff.

15. The Nassau County Treasurer when he sold to Defendant, SADIE SCHWARTZ, the lien of the 1969 County Tax and 1968/1969 School Tax, the subject of this action as aforesaid, represented and warranted that the said tax lien was superior to the lien of any and all prior recorded mortgages, including the aforesaid mortgage of Plaintiff.

16. Now and at all times hereinafter mentioned, Section 1168 of the Real Property Tax Law of the State of New York provides as follows:

"Section 1168.

The certificate of sale or any other written instrument representing a tax lien shall be presumptive evidence in all courts in all proceedings by and against the purchaser and his representatives, heirs and assigns, of the truth of the statements therein, of the title of the purchaser to the property therein described and of the regularity and validity of all proceedings had in reference to the taxes, or other legal charges for the non-payment of which the tax lien was sold and the sale thereof."

17. At all the times hereinafter mentioned Section 5-54.0 of the Nassau County Administrative Code provided in part as follows:

"-----b

Every such conveyance shall be attested by the county treasurer and the seal of the county treasurer shall be attached thereto. When so executed, the conveyance shall be presumptive evidence that:

1. The sale of the tax lien was regular.
2. All proceedings prior to such sale, including the assessing of the lands affected by such tax lien were regular.-----"

18. Defendant, SADIE SCHWARTZ when it was purchased, as aforesaid, said tax liens so encumbering the property which is the subject of this action, relied upon the aforesaid provisions representations and warranties, and that the said lien of said

taxes were superior to all prior recorded mortgages including the mortgage of Plaintiff.

19. If the relief which Plaintiff seeks in this action that the aforesaid mortgage of Plaintiff is superior to the lien of the County and School taxes imposed, levied, charged and assessed by the County, Town of Hempstead and School District #1 against the property which is the subject of this action for the County tax year 1969 and School tax year 1968/1969 is granted, the lien of the aforesaid taxes so purchased by Defendant, SADIE SCHWARTZ, as aforesaid, will be inferior and subordinate to the lien of Plaintiff's said mortgage in controvention of the aforesaid sections of the Real Property Tax Law and Nassau County Administrative Code and the aforesaid representations and warranties attaching to the said tax liens for the County taxes for the tax year 1969 and School Tax Year 1968/1969 so assessed, charged, levied and imposed against the property which is the subject of this action.

20. If the relief which Plaintiff seeks in this action that the lien of its aforesaid mortgage is superior to the lien of the County taxes for the tax year 1969 and School taxes for the Tax Year 1968/1969 imposed, assessed, charged and levied against the property which is the subject of this action, is granted, Defendant, SADIE SCHWARTZ will be damaged in the amount of \$24,305.19

WHEREFORE, Defendant SADIE SCHWARTZ, demands judgment:

1. Dismissing the complaint.
2. Declaring that the lien of the County taxes for the tax year 1969 and the School Taxes for the Tax Year 1968/1969 imposed, assessed, levied and charged against the property which is the subject of this action, is superior to the lien of the mortgage which Plaintiff seeks to foreclose by this action.
3. Declaring that the property which is the subject of this action be and the same hereby is exempt from the payment of any County tax for the tax year 1969 and School Tax for the Tax Year

1968/1969, and directing that the Defendants, County of Nassau, Town of Hempstead and School District #1 reimburse, repay and restore to Defendant, SADIE SCHWARTZ, any and all sums which it has expended in purchasing the tax lien for the County and School Taxes levied, charged, assessed and imposed against the property which is the subject of this action by the County, Town of Hempstead and School District #1 for the County Tax Year 1969 and School Tax Year 1968/1969.

4. If the relief which Plaintiff seeks in this action that the lien of its said mortgage is superior to the County Taxes for the Tax Year 1969 and School Tax Year 1968/1969 imposed, levied, charged or assessed by the County of Nassau, Town of Hempstead and School District #1, against the property which is the subject of this action, is granted that Defendant, SADIE SCHWARTZ recover from the County of Nassau, Town of Hempstead, and School District #1 the sum of \$24,305.19, together with interest from the 16th day of February, 1970, in such proportion as each of Said Defendants has received such sum.

5. That Defendant, SADIE SCHWARTZ have such other and further relief as to the Court may seem just and proper together with the costs and disbursements of this action.

STANLEY BEALS  
Attorney for Defendant SADIE  
SCHWARTZ

by

  
STANLEY BEALS

UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

GENERAL DOUGLAS MacARTHUR SENIOR  
VILLAGE, INC., et al,

Defendants.

Civil Action  
File # 71 C 1023

ANSWER OF  
DEFENDANT  
D. C. R. HOLDING  
CORP.,

Defendant, D. C. R. Holding Corp, by its attorneys, Schiffmacher  
Rochford & Cullen, answering the complaint herein:

1. Denies each and every allegation contained in paragraphs  
numbered 7, 11, and 14 of the complaint.
2. Denies knowledge or information sufficient to form a belief  
as to the allegations contained in paragraphs numbered 1, 2, 3, 4, 5, 6, 8,  
9, 10, 12, 13 and 13a of the complaint.

AS AND FOR A FIRST, SEPARATE, DISTINCT & COMPLETE  
DEFENSE TO THE ALLEGED CAUSE OF ACTION  
CONTAINED IN THE COMPLAINT, DEFENDANT  
D. C. R. HOLDING CORP. ALLEGES:

3. Upon information and belief certain village taxes were assessed  
upon or charged against the property which is the subject of this action, in  
the amount of \$20,228.11 by or on behalf of the defendant Village of Hempstead  
(hereinafter referred to as the "Village") in and for the village tax year 1969.

4. Upon information and belief the aforesaid village taxes so  
assessed upon and charged against the property which is the subject of this

action for the village tax year 1969, were not paid when the same became due and payable.

5. On or about the 4th day of May, 1970 the lien of the village taxes for the tax year 1969 assessed upon and charged against the property which is the subject of this action, by the village and unpaid as aforesaid was sold by the village to defendant, D. C. R. Holding Corp. under and pursuant to the provisions of the Village Law and the Real Property Actions and Proceedings Law of the State of New York, in such cases made and provided.

6. The lien of the unpaid village taxes for the tax year 1969 so assessed upon and charged against the property which is the subject of this action by the village, is superior to the lien of the mortgage which plaintiff seeks to foreclose in this action by reason of the provisions of 12 U.S.C. Sections 1706-b, 1714, 1733, 1741, 1747 and 1750-c and other statutes and laws of the United States of America, as well as the laws and statutes of the State of New York in such cases made and provided.

AS AND FOR A FIRST CROSS-CLAIM  
AGAINST DEFENDANT VILLAGE OF  
HEMPSTEAD, DEFENDANT, D.C.R.  
HOLDING CORP, ALLEGES:

7. Repeats and reiterates each and every allegation contained in paragraphs numbered 3, 4, 5 and 6 of the Answer as if the same had been herein set forth at length.

8. Upon information and belief, at all times hereinafter mentioned, defendant, General Douglas MacArthur Senior Village, Inc. was and still is a membership corporation organized and existing under and pursuant to the Membership Corporation Law of the State of New York, and organized for

benevolent and charitable purposes as such terms are used and employed in the Real Property Tax Law of the State of New York, to-wit: To provide on a non-profit basis rental housing and related facilities and services specially designed to meet the physical and social needs of the aged and for elderly families and elderly persons and to meet the physical and social needs of the aged and to contribute to their health, happiness and usefulness.

9. At all times hereinafter mentioned defendant, General Douglas MacArthur Senior Village, Inc., was and still is the owner in fee simple and in possession of the property which is the subject of this action.

10. At all times hereinafter mentioned, the property which is the subject of this action was and still is used and occupied by defendant, General Douglas MacArthur Senior Village, Inc. for the benevolent and charitable uses and purposes hereinbefore set forth.

11. At all times hereinafter mentioned, the property which is the subject of this action was and still is exempt from taxes, charges and assessments imposed and levied by the Village for the tax year 1969, under, pursuant and by virtue of the provisions of Sections 420 and 422 of the Real Property Actions and Proceedings Law of the State of New York.

12. By reason of the foregoing the taxes, charges and assessments imposed and levied by the Village for the tax year 1969 against the property which is the subject of this action, were improperly and illegally assessed, charged, imposed and levied and the lien thereof is illegal, void and unenforceable.

AS AND FOR A SECOND CROSS-CLAIM AGAINST  
DEFENDANT, VILLAGE OF HEMPSTEAD, DEFENDANT  
D.C.R. HOLDING CORP. ALLEGES:

13. Repeats and reiterates each and every allegation contained

in paragraphs numbered 3, 4, 5, 6, 8, 9 and 10 of this Answer as if the same had been herein set forth at length.

14. The lien of the Village tax for the tax year 1969 imposed, levied, charged and assessed against the property which is the subject of this action by the Village as aforesaid, is deemed under and pursuant to the laws of the State of New York, in such cases made and provided, to be superior to the lien of any and all prior recorded mortgages encumbering the property which is the subject of this action, including the aforesaid mortgage lien of the plaintiff.

15. The Village, when it sold to defendant, D. C. R. Holding Corp., the lien of the Village tax for the tax year 1969, the subject of this action as aforesaid, represented and warranted that the said tax lien was superior to the lien of any and all prior recorded mortgages, including the aforesaid mortgage of plaintiff.

16. Now and at all times hereinafter mentioned, Section 1454, subdivision 2 and Section 1464, subdivision 3 of the Real Property Tax Law of the State of New York, respectively provided and still provides as follows:

"Section 1454. Subdivision 2.

Each purchaser at such tax sale shall pay the amount of his bid to the village treasurer within ten days after the sale. Upon such payment the treasurer shall give to the purchaser a certificate in writing describing the real property purchased and the sum paid therefor. Each such certificate shall be presumptive evidence that the sale and all proceedings prior thereto, including the assessment of the land and the levying of the tax were regular and according to the provisions of this section and of all laws relating thereto."

"Section 1464, Subdivision 3.

If the real property described in such notice is not redeemed within the time limited, the village treasurer shall, upon written application and the surrender of the certificate of sale together with proof of service by mail of the notice to redeem, or upon application by the board of trustees of the village with such proof of service, execute and deliver to the purchaser or village a conveyance of the real property so sold, the description of which shall include a specific statement of whose title or interest is



thereby conveyed, as appears on the record, which conveyance shall vest in the grantee an absolute estate in fee, subject, however, to all claims the village county or state may have thereon for taxes, liens or encumbrances."

17. Defendant, D. C. R. Holding Corp. when it purchased as aforesaid, the lien of the Village taxes for the tax year 1969 so encumbering the property which is the subject of this action, relied upon the aforesaid provisions of the Real Property Tax Law of the State of New York, and that the said lien of said village tax was superior to all prior recorded mortgages including the mortgage of plaintiff.

18. If the relief which plaintiff seeks in this action that the aforesaid mortgage of plaintiff is superior to the lien of the village taxes imposed, levied, charged and assessed by the village against the property which is the subject of this action for the tax year 1969, is granted, the lien of the aforesaid village tax for the tax year 1969 so purchased by defendant, D. C. R. Holding Corp. as aforesaid, will be inferior and subordinate to the lien of plaintiff's said mortgage in controvention of the aforesaid sections of the Real Property Tax Law and the aforesaid representations and warranties attaching to the said tax lien for the village taxes for the tax year 1969 so assessed, charged, levied and imposed against the property which is the subject of this action.

19. If the relief which plaintiff seeks in this action that the lien of its aforesaid mortgage is superior to the lien of the village taxes for the tax year 1969, imposed, assessed, charged and levied against the property which is the subject of this action, is granted, defendant, D. C. R. Holding Corp. will be damaged in the amount of \$20,228.11.

WHEREFORE, defendant, D. C. R. Holding Corp. demands judgment:

1. Dismissing the complaint.
2. Declaring that the lien of the village taxes for the tax year 1969 imposed, assessed, levied and charged against the property which is the subject of this action, is superior to the lien of the mortgage which plaintiff seeks to foreclose by this action.
3. Declaring that the property which is the subject of this action be and the same hereby is exempt from the payment of any village tax for the tax year 1969 and directing that the defendant, Village of Hempstead, reimburse, repay and restore to defendant, D. C. R. Holding Corp. any and all sums which it has expended in purchasing the tax lien for the village taxes levied, charged, assessed and imposed against the property which is the subject of this action by the village for the tax year 1969.
4. If the relief which plaintiff seeks in this action that the lien of its said mortgage is superior to the village taxes for the tax year 1969 imposed, levied, charged or assessed by the Village, against the property which is the subject of this action, is granted, that defendant D. C. R. Holding Corp. recover from the village the sum of \$20,228.11, together with interest from the 4th day of May, 1970.
5. That defendant, D. C. R. Holding Corp. have such other and further relief as to the court may seem just and proper together with the costs and disbursements of this action.

SCHIFFMACHER, ROCHFORD & CULLEN  
Attorneys for Defendant, D. C. R. Holding Corp.

By: C. Ellis Schiffmacher  
C. Ellis Schiffmacher, a Partner of the firm

UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF NEW YORK

- - - - - X  
UNITED STATES OF AMERICA,

Plaintiff,

Civil Action  
File # 71 C 1023

- against -

GENERAL DOUGLAS MacARTHUR SENIOR  
VILLAGE, INC., et al,

REPLY OF THE DEFENDANT,  
TOWN OF HEMPSTEAD, TO  
THE CROSS-CLAIM OF  
SADIE SCHWARTZ.

Defendants.

- - - - - X  
Defendant, Town of Hempstead, by its attorney, Howard  
E. Levitt, for its reply to the cross-claim of the defendant,  
Sadie Schwartz, respectfully alleges:

1. Denies knowledge or information sufficient to form  
a belief as to the allegations contained in paragraphs "8",  
"9" and "10" of the cross-claim.

2. Denies each and every allegation contained in  
paragraphs "11", "12", "15", "18", "19" and "20" of the  
cross-claim.

AS AND FOR A FIRST DEFENSE.

3. The exemption purported to be claimed by the  
defendant, Sadie Schwartz, is not an exemption permitted  
under the Private Housing Finance Law to be granted to the  
buyer of a tax lien.

AS AND FOR A SECOND DEFENSE.

4. Pursuant to Section 577, subdivision 1-a, of the Private Housing Finance Law, exemption of the subject property is a discretionary exemption which may be granted by the local legislative body.

5. Upon information and belief, no exemption has been granted to General Douglas MacArthur Senior Village, Inc.

AS AND FOR A THIRD DEFENSE

6. This Court is without jurisdiction over the subject matter of the cross-claim. In effect, the cross-claimant, Sadie Schwartz, is now requesting that this Court grant a Real Property exemption under State Law.

WHEREFORE, defendant, Town of Hempstead, demands judgment dismissing the cross-claim against it by defendant, Sadie Schwartz, together with the costs and disbursements of this action.

HOWARD E. LEVITT  
Town Attorney and  
Attorney for Defendant,  
Town of Hempstead  
Office and P. O. Address  
Hempstead Town Hall  
Town Hall Plaza, Main Street  
Hempstead, New York 11550

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

GENERAL DOUGLAS MACARTHUR SENIOR  
VILLAGE, INC., et al,

Defendants.

CIVIL ACTION

FILE NO. 71 C 1023

REPLY OF DEFENDANT  
VILLAGE OF HEMPSTEAD TO  
THE CROSS-CLAIM AGAINST  
THIS DEFENDANT BY  
DEFENDANT D.C.R. HOLDING  
CORP.

Defendant, Village of Hempstead, by its attorney, Saul Horowitz, for its reply to the cross-claim of the defendant, D.C.R. Holding Corp. respectfully alleges:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 8, 9 and 10 of the cross-claim.

2. Denies each and every allegation contained in paragraphs 11, 12, 15, 17, 18 and 19 of the cross-claim.

AS A FIRST DEFENSE

3. This Court does not have jurisdiction over the subject matter of the cross-claim in that there is neither diversity of citizenship nor a federal question involved in connection with said cross-claim.

AS A SECOND DEFENSE

4. The exemption claimed by defendant, D.C.R. Holding Corp. is not an exemption permitted under law to be claimed by D.C.R. Holding Corp.

5. The exemption, if any, is a personal exemption which may be claimed by General Douglas MacArthur Senior Village, Inc. and the defendant, D.C.R. Holding Corp. may not claim such exemption.

AS A THIRD DEFENSE

6. Pursuant to Section 577 subdivision 1 (a) of the Private Housing Finance Law an exemption of the subject property upon which this action is predicated to be relieved from taxes imposed by the Village of Hempstead is a discretionary exemption which may be granted by the local legislative body, to wit, the Board of Trustees of the Village of Hempstead.

7. An application for a partial exemption upon the subject premises was made by the General Douglas MacArthur Senior Village, Inc. to the Village of Hempstead and the same was denied.

8. That no appeal from the denial of said partial exemption was taken by General Douglas MacArthur Senior Village, Inc.

WHEREFORE, defendant Village of Hempstead demands judgment dismissing the cross-claim against it by defendant, D.C.R. Holding Corp. together with the costs and disbursements of this action.

SAUL HOROWITZ

Corporation Counsel for the  
Defendant, Village of  
Hempstead

Office Address

250 Fulton Avenue

Hempstead, New York 11550

516 476-4501

By: 

SAUL HOROWITZ

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

MAR 14 1972

----- X  
UNITED STATES OF AMERICA,

Plaintiff,

- against -

JUDGMENT OF  
FORECLOSURE  
AND SALE

Index No.  
71 C 1023

GENERAL DOUGLAS MacARTHUR SENIOR  
VILLAGE, INC., STATE OF NEW YORK  
COUNTY OF NASSAU, TOWN OF HEMPSTEAD,  
VILLAGE OF HEMPSTEAD, SCHOOL DISTRICT #1,  
DISABLED AMERICAN VETERANS DEPARTMENT OF  
NEW YORK, A.T.S. PROPERTIES, INC., OMNI  
INVESTING CORP., SADIE SCHWARTZ, D.C.R.  
HOLDING CORP., HENRIETTA RAND, MARTHA  
BARKUS and SHIRLEY HERSHKOWITZ as  
EXECUTORS of the LAST WILL AND TESTAMENT  
OF DAVID RAND, DECEASED,

Defendants.  
----- X

On the summons and complaint filed herein on the 4th day of August 1971; the notice of pendency heretofore filed in the office of the Clerk of Nassau County on the 10th day of August 1971, on the annexed affidavit of regularity of JOSEPH ROSENZWEIG, Assistant United States Attorney, sworn to the 10th day of February 1972, and the affidavit of Joseph F. McDermott, sworn to the 9th day of February 1972, the returns on service on the defendants, the answers and notices of appearance heretofore filed herein, the order made and entered herein on the 3rd day of February 1972, wherein it was determined by this Court that liens for unpaid realty taxes and assessments accruing sub-



sequent to the recording of plaintiff's mortgage herein are to be accorded priority over said mortgage lien, and upon all the proceedings heretofore had herein, from all of which it appears that this action was brought to foreclose a mortgage on real property situated in the County of Nassau, and that the entire balance of the principal sum secured by the said mortgage, to wit, the sum of \$1,716,021.77 together with interest thereon is now due and payable; that all of the defendants herein have been duly served with the summons and complaint or have duly appeared herein by attorney, except "John Doe #2" through "John Doe #100"; that the time to answer or move with respect to the complaint has expired as to each and all of the such defendants; that all defendants herein have interposed answers to the complaint except the defendants Omni Investing Corp., Disabled American Veterans Department of New York, School District #1, State of New York, A.T.S. Properties Inc., and that their time to do so has not been extended by consent or by order of this Court, and that each of said defendants is in default; that a stipulation of dismissal has been filed against the defendant Louis Schiff, that none of the defendants is an infant, incompetent, or absentee; that pursuant to order entered herein on the 22nd day of October 1971, Henrietta Rand, Martha Barkus and Shirley Hershkowitz, as executors of the last will and testament of David Rand were substituted as party defendants herein in place and stead of defendant David Rand, in accordance with Rule 25 F.R.C.P.

That the notice of pendency heretofore filed as aforesaid, contains correctly and truly all of the particulars required by law to be stated in said notice; and the Court having computed the amount due to the plaintiff upon the note and mortgage described in the complaint herein, and having found that there is due to the plaintiff thereon to the date hereof, the sum of \$1,716,021.77 with interest thereon from the 1st day of July 1971 to the 22nd day of February 1972 amounting in all to the sum of \$1,745,076.61 and that the mortgaged premises should be sold in one parcel, and notice of this application for judgment having been given to the attorneys for all parties entitled to notice thereof,

NOW, on motion of ROBERT A. MORSE, United States Attorney for the Eastern District of New York, attorney for plaintiff, it is

ORDERED, that this action be dismissed as against the defendants "John Doe #2" through "John Doe #100" and that the names of such defendants "John Doe #2" through "John Doe #100", all such names being fictitious, the true names being unknown to the plaintiff, be and the same hereby are stricken from all the proceedings and papers heretofore had and filed herein, and it is further

ORDERED, that the name of the defendant sued herein as "John Doe #1" be and the same hereby is changed through these proceedings to read A.T.S. Properties, Inc. without prejudice to any of the proceedings heretofore had herein, and it is further

ORDERED, that Henrietta Rand, Martha Barkus and Shirley Hershkowitz, as executors of the last will and testament of David Rand, deceased be substituted for the defendant David Rand through these proceedings and in the title thereof, and it is further

ORDERED, that the default of the defendants aforementioned who were duly served but have not answered be and the same hereby is noted; and it is further

ORDERED AND ADJUDGED, that the plaintiff have judgment herein for the sum of \$1,745,076.61 together with interest thereon from the date of this judgment, besides the sum of \$223.92 as taxed by the Clerk of the Court and hereby adjudged to the plaintiff for costs and disbursements in this action, with interest thereon from the date hereof; and it is further

ORDERED AND ADJUDGED, that the mortgaged premises described in the complaint and as hereinafter described, be sold in one parcel, subject to the following: all unpaid taxes, assessments and charges or water rates which are or may become liens on the premises at the time of sale, including any and all liens assessed against the premises which have been sold to the respective defendants herein or to others, if any; any state of facts that an accurate survey may show; easements, covenants, restrictions or reservations of record, if any; zoning restrictions and any amendments thereto according to law, and now in force; existing violations and orders of the appropriate departments of the County, Town, or Village, if any; the physical condition of the premises at the time of closing; and without any apportionments

or adjustments; at public auction in the rotunda of the Supreme Court Building, Supreme Court Drive, Mineola, New York, by and under the direction of *Edwin W. Charnin*, Esq. of *10 Cutter Mill Road, Great Neck, 466-6120 (516)* who is hereby appointed Master for that purpose; that the said Master give public notice of the time and place of said sale according to federal law and the practice of this Court by advertising in *Long Island Daily Press* (Nassau Edition); that the plaintiff or a governmental agency or officer thereof or any other party to this action may become the purchaser at such sale; that in the event the plaintiff or such governmental agency or officer shall become the purchaser at the said sale, it shall not be required to make any deposit thereon; that said Master execute and deliver to the purchaser at such sale a deed of the premises sold; that said Master on receiving the proceeds of sale shall deposit the same in his own name as Master in *National Bank of North America, Great Neck Branch* and shall thereafter make the following payments and his checks drawn for that purpose shall be paid by said depository:

1st. A sum not exceeding \$100.00 to the said Master for his fees herein.

2nd. The expenses of advertising as shown on the bills presented and certified by the said Master to be correct, and duplicate copies of which shall be left with said depository.

3rd. The sum of \$223.92 to the plaintiff, adjudged for its costs and disbursements in this action, with interest

thereon from the date of entry hereof; and also the sum of \$1,745,076.61 the amount computed by the Court and adjudged due to plaintiff as aforesaid, together with interest thereon from the date hereof,

In case the plaintiff or a governmental agency or officer is the purchaser of said mortgaged premises at said sale, or in the event the rights of the purchaser at said sale and the terms of sale under this judgment shall be assigned to and be acquired by the plaintiff or any governmental agency or officer, and a valid assignment thereof be filed with said Master, the said Master shall not require plaintiff or said governmental agency or officer to pay in cash the amount bid at such sale, but shall execute and deliver to the plaintiff or said governmental agency or officer a deed of the premises sold upon the payment to said Master of the amount specified above in items marked "1st" and "2nd"; that the balance of the amount bid after deducting therefrom the aforesaid amount paid by the plaintiff for Master's fees and advertising expenses, shall be allowed to the plaintiff and applied by said Master upon the amounts due to the plaintiff as specified above in the item marked "3rd"; that said Master on receiving said several amounts from the plaintiff shall forthwith pay out the same as aforesaid, unless the same shall have already been paid, and shall deposit any surplus money in said depository as hereinabove directed.

That said Master shall take the receipt of the plaintiff or its attorney for the amounts paid as hereinbefore directed,

in item marked "3rd", and file it with his report of sale; that he deposit the surplus moneys, if any, with the aforesaid depository within five days after the same shall be received and be ascertainable, to the credit of this action, to be withdrawn only on the order of a Judge of this Court; that said Master shall make a report of such sale and file it with the Clerk of the Court, with all convenient speed; that if the proceeds of such sale be insufficient to pay the amount adjudged due to the plaintiff with interest and costs as aforesaid, the said Master shall specify the amount of such deficiency in his report of sale and that if the proceeds of such sale be insufficient to pay the amount adjudged due to the plaintiff with interest and costs as aforesaid, the plaintiff recover of the defendant General Douglas MacArthur Senior Village, Inc. the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the mortgaged debt remaining unsatisfied after a sale of the mortgaged premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made pursuant to federal law and the amount thereof is determined and awarded by an order of this Court; and it is further

ORDERED, that the purchaser at said sale be let into possession on production of the Master's deed; and it is further

ORDERED AND ADJUDGED, that each and all of the defendants in this action, and all persons claiming under them, or any or either of them, after the filing of the notice of the pendency

of this action, be and they hereby are forever barred and foreclosed of all right, title, claim, interest, lien and equity of redemption in said mortgaged premises and each and every part thereof, except as provided by the aforementioned order entered herein on the 3rd day of February 1972.

The following is a description of said mortgaged premises hereinbefore mentioned:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Incorporated Village of Hempstead, Town of Hempstead, County of Nassau and State of New York being more particularly bounded and described as follows:

BEGINNING at a point of the Easterly side of Clinton Street (Clinton Road) as widened, distant 127.46 feet Southerly from the corner formed by the intersection of the Southerly side of Yale Street and the Easterly side of Clinton Street;

Running thence South 84 degrees 58 minutes 50 seconds East 346.77 feet to the Westerly side of Horse Brook, Property of the County of Nassau;

Thence along the last mentioned land, the following 5 courses and distances:

- (1) South 10 degrees 45 minutes 00 seconds West 81.75 feet;
- (2) South 27 degrees 14 minutes 00 seconds West 16.894 feet;
- (3) South 44 degrees 24 minutes 30 seconds West 67.732 feet;
- (4) South 27 degrees 14 minutes 00 seconds West 56.876 feet;
- (5) South 15 degrees 38 minutes 00 seconds West 134.23 feet to the Northerly side of land now or formerly of H. M. G. Realty Co., Inc.;

Thence along the Northerly side of the last mentioned land North 77 degrees 32 minutes 29 seconds West 124.35 feet to the Easterly side of land now or formerly of Clarke;

Thence along the land now or formerly of Clarke the following 2 courses and distances:

- (1) North 11 degrees 23 minutes 09 seconds East 50.00 feet;

(2) North 77 degrees 32 minutes 21 seconds West 159.37 feet to the Easterly side of Clinton Street;

Thence along the Easterly side of Clinton Street, North 12 degrees 33 minutes 46 seconds East 249.64 feet to the point or place of BEGINNING.

Together with all right, title, and interest of the owner thereof, if any, in and to the land lying in the streets and road in front of and adjoining said premises, to the center line thereof.

Together with all fixtures and articles of personal property annexed to, installed in, or used in connection with the mortgaged premises, all as is more fully set forth in said mortgage.

Dated: Brooklyn, New York  
March 9, 1972.

/s/ Jack B. Weinstein

U.S.D.J.



UNITED STATES OF AMERICA,

Plaintiff,

- against -

GENERAL DOUGLAS MacARTHUR SENIOR  
VILLAGE INC., et al.,

Defendants.

MASTER'S REPORT OF SALE

Index No. 71 C 1023

FILED  
U. S. DISTRICT COURT S.D. N.Y.

★ APR 28 1972 ★

TO THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK:

I, EDWIN N. CHARNIN, the Master appointed by the judgment entered herein bearing date March 9, 1972, to make the sale of the mortgaged lands and premises, therein particularly described, do respectfully report as follows:

FIRST: That I caused due notice of sale of said lands and premises on the 21st day of April, 1972 at 10:00 o'clock in the forenoon of that day to be given and published according to law and the rules and practices of this Court, as shown by the affidavit of publication heretofore filed herein.

SECOND: That at the time and place for which said sale was noticed, I attended in person and offered said mortgaged lands and premises for sale to the highest bidder, and said premises were then and there fairly struck off to United States of America, etc.

for \$1,630,000. that being the highest sum bid therefor, and the deposit of 10% of amount bid was waived by plaintiff's attorney.

THIRD: That in accordance with the terms of the judgment above referred to, I executed and delivered to United States of America, etc. the usual Master's deed of the said lands and premises sold.

FOURTH: That I have allowed to plaintiff the amounts shown in the statement which were paid by plaintiff or awarded by the judgment.

FIFTH: That I have received for my fee the sum of \$100.00 which sum was paid by the plaintiff herein.

Annexed hereto and made a part of my report is a statement showing the several items aforesaid, and the mode of computation of the deficiency, all of which is respectfully submitted.

Statement

Amount due plaintiff under the judgment herein	\$ 1,745,076.61
Interest from March 9, 1972 to April 21, 1972	13,088.07
Master's Fee at Sale	100.00
Advertising notice of sale	62.48
Plaintiff's costs & disbursements with interest thereon	225.60

Less Amount Bid at Sale

Total

\$ 1,758,552.76  
1,630,000.00

Deficiency

\$ 128,552.76

Dated: April 27, 1972

*Edwin N. Charnin*  
MASTER

STATE OF NEW YORK: COUNTY OF NASSAU : SS:

EDWIN N. CHARNIN, being duly sworn, deposes and says that he is the Master duly appointed to make the sale in the above-entitled action and the officer who made such sale. That the above report signed by him is in all respects true and correct and that said report and statement therein contain a true, accurate and complete report of the disposition of the proceeds of such sale.

Sworn to before me this

21<sup>st</sup> day of April, 1972

M-62

Rev.

3/10/70

NOTARY

*Edwin N. Charnin*

MASTER

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
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UNITED STATES OF AMERICA,

Plaintiff,

-against-

GENERAL DOUGLAS MacARTHUR SENIOR  
VILLAGE, INC., etal.,

Defendants.  
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NOTICE OF MOTION FOR  
SUMMARY JUDGMENT

Index No. 71 C 1023

PLEASE TAKE NOTICE, that upon the affidavit of SAUL HOROWITZ sworn to June 25, 1973, the answer of the Defendant D.C.R. Holding Corp. and the reply of Defendant Village of Hempstead, the Defendant Village of Hempstead will move this Court at a term for motions to be held in Courtroom #10 of the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 30th day of July, 1973, at 10:00 a.m. for an order directing that the cross-claims of the Defendant D.C.R. Holding Corp. against the Defendant Village of Hempstead be stricken and that summary judgment be granted to the Defendant Village of Hempstead against the Defendant D.C.R. Holding Corp. pursuant

to Rule 56 of the Federal Rules of Civil Procedure on the ground  
that there is no genuine issue as to any material fact and that  
Defendant Village of Hempstead is entitled to a judgment dis-  
missing the cross-claims of the Defendant D.C.R. Holding Corp.  
as a matter of law, and for such other and further relief as to  
the Court may seem just and proper.

Dated: Hempstead, New York  
June 25, 1973

Yours, etc.

SAUL HOROWITZ  
Attorney for Defendant  
Village of Hempstead  
250 Fulton Avenue  
Hempstead, New York 11550

By: 

TO: SCHIFFMACHER, ROCHFORD, CULLEN & FARRELL  
Attorneys for Defendant  
D.C.R. Holding Corp.  
98 Cutter Mill Road  
Great Neck, New York 11021

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

against-

GENERAL DOUGLAS MacARTHUR SENIOR  
VILLAGE, INC., etal.

Defendants.

AFFIDAVIT IN SUPPORT OF  
MOTION OF DEFENDANT  
VILLAGE OF HEMPSTEAD FOR  
SUMMARY JUDGMENT

Index No. 71 C 1023

STATE OF NEW YORK )  
COUNTY OF NASSAU ) ss:

SAUL HOROVITZ, being duly sworn, deposes and says:

I am Corporation Counsel for the Defendant Village of Hempstead and am personally familiar with all of the facts and proceedings heretofore had herein.

I make this affidavit in support of the motion of the Defendant Village of Hempstead for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure dismissing the cross-claims set forth in the answer of Defendant D.C.R. Holding Corp. as against the Village of Hempstead. There are no genuine issues as to any material facts and it is the contention of this Defendant that the Village of Hempstead is entitled to a judgment as a matter of law.

The facts in this litigation are not in dispute and may be summarized as follows:

General Douglas MacArthur Senior Village, Inc. hereinafter referred to as "MacArthur" is a membership corporation which was chartered pursuant to the Laws of the State of New York, on January 25, 1965, to provide housing for elderly families and persons on a non-profit basis.

On or about April 28, 1966, plaintiff acting through the Secretary of Housing and Urban Development and pursuant to the authority granted in Section 202 of the Federal Housing Act of 1959 (Title 12, U.S.C. Section 1701q) loaned the sum of \$1,774,000 to MacArthur.

Plaintiff received a note in that sum secured by a first mortgage which, together with a regulatory agreement was recorded in the Office of the Clerk of the County of Nassau on May 9, 1966.

After completion of the senior village facility, MacArthur failed to pay County real estate taxes for the years 1969 and 1970 and School District and Village taxes for the 1969 fiscal year which were assessed against it.

D.C.R. Holding Corp., purchased the Village tax lien from the Village of Hempstead for \$20,228.11. A copy of said lien is annexed hereto.

On August 4, 1971, a proceeding was commenced pursuant to Title 28 U.S.C. §1345 to foreclose Plaintiff's first mortgage on the ground that MacArthur had violated those provisions of the

note and mortgage requiring it to pay all local real estate taxes levied against the property as the same became due.

D.C.R. Holding Corp, the holder of an unpaid tax sale certificate was joined in this proceeding as a defendant and urged that its lien was superior to those of Plaintiff.

The answers filed by the Village and D.C.R. disputed Plaintiff's claim that its mortgage was entitled to priority over the local real estate tax liens.

D.C.R. Holding Corp., cross-claimed against the Village for recovery of the sums it paid for its tax sale certificate if Plaintiff's mortgage were accorded priority.

Plaintiff then moved for summary judgment pursuant to F.R.Civ.P.56. The motion was granted by District Judge Jack B. Weinstein who found, however, that the local real estate tax liens were superior to Respondent's mortgage.

The Court of Appeals unanimously reversed that determination of the District Court with respect to the priority to be given local real estate tax liens holding that the application of the Federal Tax Lien Act of 1966 should be limited to Federal tax liens and should not be extended to the somewhat analogous field of Federal mortgages.

The United States Supreme Court denied certiorari.

A copy of the answer of Defendant D.C.R. Holding Corp. is annexed hereto as well as a copy of the reply to the cross-claims

interposed by D.C.R. Holding Corp. against the Village of Hempstead.

The first cross-claim is predicated upon the theory that MacArthur was entitled to an exemption under the Real Property Tax Law of the State of New York and hence the assessment of Village taxes against this real property was illegal.

This contention is wholly without merit.

At no time was MacArthur exempt from local property taxes nor under any discretionary power granted to the Village was such exemption afforded to MacArthur.

As late as July 15, 1971, Richard V. Guardino, attorney for MacArthur wrote to the Mayor of the Village of Hempstead requesting partial tax exemption for the MacArthur property. A copy of said letter is annexed hereto.

Thereafter and on or about July 23, 1971, the Village Clerk wrote to Richard Guardino indicating that no decision had been reached regarding any claimed exemption by MacArthur from payment of Village taxes. A copy of said letter is annexed hereto.

It is obvious, therefore, that MacArthur never had exempt status from Village taxes at any time and more particularly from Village taxes for the year 1969.

It is difficult to comprehend how the Plaintiff in this action could have been granted a judgment of foreclosure for non-payment of taxes when it is claimed that the real property of MacArthur was exempt from taxation.

The second cross-claim of D.C.R. is predicated upon the



theory that the Village in selling its tax lien for the year 1969 must be deemed to have represented and warranted that its tax lien was superior to the lien of any and all prior recorded mortgages including that of the Plaintiff.

This contention is not based upon any documentary or oral representations claimed to have been made by the Village. Rather, it is predicated upon D.C.R.'s interpretation of the Real Property Tax Law of the State of New York.

It is the position of the Village that the MacArthur property was properly assessed and the tax lien sold as provided by law.

D.C.R. in purchasing this tax sale certificate did so with full knowledge of the Plaintiff's prior mortgage and the law applicable thereto.

As a volunteer D.C.R. in making payment may not recover same if in fact its understanding of the law applicable thereto was incorrect.

Furthermore, D.C.R. has set forth no grounds which would permit the Village to return to D.C.R. the proceeds received from the sale of the tax sale certificate pursuant to Section 1464, subdivision 6 of the Real Property Tax Law.

For the reasons stated above, it is respectfully submitted that D.C.R. has failed to set forth any recognizable claims against the Village of Hempstead and that the cross-claims of this Defendant are insufficient as a matter of law.

Defendant Village of Hempstead is entitled to judgment against Defendant D.C.R. Holding Corp. dismissing its cross-claims as against the Village, together with costs.

  
SAUL HOROWITZ

Sworn to before me this  
25th day of June, 1973.

MATTHEW FEINBERG  
NOTARY PUBLIC, State of New York  
No. 30-1181450  
Qualified in Nassau County  
Term Expires March 30, 1975

**Duplicate**

INCORPORATED VILLAGE OF HEMPSTEAD  
HEMPSTEAD, NEW YORK

# Certificate

# TAX SALE CERTIFICATE

No. .... 18 ..... 1933

ISSUED UPON THE SALE OF THE  
PROPERTY FOR ~~963~~ VILLAGE TAX  
PURSUANT TO SECTION 126-D OF THE VILLAGE LAW  
OF THE STATE OF NEW YORK

Village Clerk:-

I, Andrew S. Pitro, Treasurer for the Incorporated Village of Hempstead, Nassau County, New York, do hereby certify that a public auction held by me on the 4th day of May, 1970 at the Village Offices in said Village, No. 99 Nichols Court, Hempstead, N.Y., in pursuance of Section 126-d of the Village Law of the State of New York and of a resolution of the Board of Trustees of said Incorporated Village of Hempstead duly adopted on the 6th day of February, 1970.....  
 .....

.....D.C.R. Folding Co., Inc.

purchased the following described premises:-

260 CLINTON ST

34-245-575

6

for which said premises said purchaser paid the respective amount(s) at which said premises were offered for sale pursuant to the Official Tax Sale Notice, being \$ 20,228.11

Said premises have been sold subject to any unpaid assessments thereon levied by said Incorporated Village of Hempstead prior to none

and any unpaid tax liens held by said Village for years prior to none

Dated this 4th day of May, 19 70

Village Clerk - Treasurer  
Incorporated Village of Hempstead, New York

COUNTY OF NASSAU }  
STATE OF NEW YORK } ss.:

On this 4th day of May, 1970 before me personally came Andrew S. Pitaro, to me known and known to me to be the Treasurer of the Incorporated Village of Hempstead, the person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Notary Public, Nassau County, New York

1500-3/67/c-

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

GENERAL DOUGLAS MAC ARTHUR SENIOR  
VILLAGE, INC., STATE OF NEW YORK,  
COUNTY OF NASSAU, VILLAGE OF HEMPSTEAD,  
TOWN OF HEMPSTEAD, SCHOOL DISTRICT No.1,  
SADIE SCHWARTZ, D.C.R. HOLDING CORP.,  
HENRIETTA RAND, MARTHA BARKUS, SHIRLEY  
HERSHKOWITZ,

71 C 1023

Defendants.

Appearances:

HON. ROBERT A. MORSE,  
United States Attorney, Eastern District of New York  
For Plaintiff

HON. JOSEPH JASPAN,  
County Attorney of Nassau County  
Executive Building, Mineola, New York  
For Defendant County of Nassau

HON. SAUL HOROWITZ,  
Corporation Counsel for the Village of Hempstead  
For Defendant Village of Hempstead

HON. HOWARD E. LEVITT,  
Town Attorney, Town of Hempstead  
For Defendant Town of Hempstead

GILBERT HENOCH, Esq.  
320 Fulton Street, Hempstead, New York  
For Defendant School District No. 1

STANLEY BEALS, Esq.  
380 North Broadway, Jericho, New York 11753  
For Defendant Sadie Schwartz

SCHIFFMACHER, ROCHFORD & CULLEN, Esqs.  
98 Cutter Mill Road, Great Neck, New York 11021  
For Defendant D.C.R. Holding Corp.

MICHAEL P. GURLIDES, Esq.  
194 Old Country Road, Mineola, New York  
For Defendants Henrietta Rand, Martha Barkus,  
Shirley Hershkowitz

WEINSTEIN, D.J.

Cross claimants purchased tax liens upon the property of General Douglas MacArthur Senior Village, Inc. from the County of Nassau and from a school district, village and town in that county. Within months of the purchase, the United States, as mortgagee of the MacArthur property, moved to foreclose because of a failure to pay taxes and local water charges in breach of the mortgage agreement. An effort by the municipalities and cross claimants to establish priority over the United States in the proceeds of the foreclosure was unsuccessful. See United States v. General Douglas MacArthur Senior Village, Inc., 337 F.Supp. 955 (E.D.N.Y.) rev'd, 470 F.2d 675 (2d Cir.) cert. denied, sub nom., County of Nassau et al. v. United States, 412 U.S. 922 (1973).

Whether cross claimants are entitled to a refund of the money paid to the taxing authorities for the now worthless tax lien certificates is the question now posed. Since there is no disputed question of fact, the matter is ripe for adjudication on the motions for summary judgment. Dressler v. Sandpiper, 331 F.2d 130 (2d Cir. 1964). Jurisdiction is not seriously questioned; all cross claims are so closely related to the main action as to be ancillary. See e.g., R.M. Smyth & Co. v. Chase National Bank of the City of New York, 291 F.2d 721, 724 (2d Cir. 1961); C. Wright, Federal Courts 353 (2d ed. 1970).

New York law governs this dispute. Cf. Aquilino v. United States, 363 U.S. 509, 80 S.Ct. 1277 (1960); United States v. Brosnan, 363 U.S. 237, 80 S.Ct. 1108 (1960); Eric R.Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817 (1938).

Under that law, as indicated below, these purchasers of tax liens cannot recover from the local taxing authorities.

#### Tax Liens in General

Tax lien systems begin to operate when taxes are levied as a lien against the land of a delinquent taxpayer. See; generally, N.Y. Real Property Tax Law Art. XIV; 16 McQuillin, Municipal Corporations § 44.139 at 401 (3d ed. 1972); H. K. Allen, Collection of Delinquent Taxes by Recourse to the Taxed Property, 3 Law & Contemporary Problems 397 (1936); Note, Tax Sale Law in New Jersey: A Re-examination, 26 Rutgers L.R. 266 (1973), Note, Marketable Title in New York State; Tax Deeds, 9 Syracuse L.R. 69, 70 (1957). In all states, the taxpayer enjoys a "redemption period" during which he can pay his taxes plus interest and penalties to remove the lien.

Taxing authorities may sell the liens to members of the public in the form of tax sale certificates. Selling certificates is justified on the ground that it provides the



municipality with a source of immediate cash. H. K. Allen, Collection of Delinquent Taxes by Recourse to the Taxed Property, 3 Law and Contemporary Problems, 397, 405 (1936). These certificates represent an "inchoate right to a conveyance of the real property [which] would mature only in the event that such [redemption] payment was not made." Blatnicky v. Ciancimino, 1 App. Div. 2d 383, 389, 151 N.Y.S.2d 267, 273 (2d Dept. 1956); H. K. Allen, supra, at 405.

#### Tax Liens in Nassau County

Local government in Nassau County is dependent upon income derived primarily from taxation of real estate. The Nassau County Administrative Code (Laws of 1939, Chapter 272), title B Article 2, provides for collection of municipal taxes by the County Treasurer. It applies to all but village taxes, which are controlled by similar state provisions. N. Y. Real Property Tax Law Art. XIV.

Section 5-32.0 of the Code authorizes the Nassau County Treasurer to bring a plenary action for the amount of taxes due, together with penalties and interest. In the absence of such an election, section 5-33.0 requires the Treasurer to sell liens at an annual tax sale. The tax sale

lists and notices of advertising normally encompass thousands of parcels of land described by a section, block and lot on the Nassau County Land and Tax Map and, if available, by the name of the owner of the real property as it appears on the tax books.

At the time of the sale, prospective purchasers bid for specific tax liens at a rate of interest and penalty as described in section 5-39.0 and 5-40.0 of the Nassau County Administrative Code. The lowest interest rate bid wins. Lower rates benefit the taxpayer since it means he can redeem by paying less interest on overdue taxes.

Although bids may be made at the maximum rate of ten (10%) percent for each six month period within which the tax remains unpaid after the sale, not to exceed 24 months, bids are normally much lower because of competition among investors. For example, the interest and penalty for the one MacArthur sale exhibited to the court was six per cent.

When a bidder has successfully purchased a lien, he obtains a Certificate of Sale containing information descriptive of the parcel, the amount bid and, in accordance with section 5-41.0, "7. Such other information as the county

treasurer shall deem expedient." A reservation of priority rights of the sovereign is inserted in the County Certificate pursuant to paragraph 7. The printed legend, in type of the same size as the rest of the document reads: "All liens on property involved in this sale are sold subject to . . . any and all superior tax liens of Sovereignities and other Municipalities." (Emphasis supplied.) The United States is a sovereignty within the meaning of this certificate.

- No objection was made to the form of certificate until after this action was commenced by the United States to enforce its priority. But even without such an express statement the reservation as to superior liens of sovereignties would have been implied under New York law. N.Y. Real Property Tax Law § 1020(1); Riverhead Estates Civic Association v. Gabron, 206 Misc. 405, 134 N.Y.S.2d 13 (Suffolk Co. Ct. 1954); cf. Hannah v. Babylon Holding Corp., 28 N.Y.2d 89, 320 N.Y.S.2d 25 (1971).

#### Lien Validity vs. Lien Priority

It is important at the outset to distinguish between tax lien validity and tax lien priority. A lien may prove worthless first, because the lien and therefore the resulting tax deed is invalid; or second, because the priority of the

lien is subordinate to a superior interest, leaving no equity to the inferior lien holder. Thus a lien may be valid and yet lack priority.

#### Was the Lien Invalid?

Invalidity may result from many causes. The taxing authority may have assessed the wrong land, calculated too large a tax, or lacked the power to tax at all. Cross claimants urge lien invalidity on the ground that the local authorities lacked the power to tax because of the sovereignty of the United States. They are wrong. The municipalities did have the power to tax the MacArthur property. In this very case, the Court of Appeals wrote that the property "is not immune from local taxation . . . " United States v. General Douglas MacArthur Senior Village, Inc., 470 F.2d 675, 680 (2d Cir.) cert. denied, sub nom., County of Nassau et al. v. United States, 412 U.S. 922 (1973).

#### Did the Taxing Authorities Warrant Priority?

The Court of Appeals for the Second Circuit held in favor of the priority of the federal mortgage over the tax lien, ruling that the local government could not enforce their liens "until the federal debt is satisfied." 470 F.2d at 680. These federal claims were worth more than the property, so that

unless priority was warranted, the tax lien certificates became worthless.

It is stipulated that there were no written or oral express warranties by any municipal official as to priority. Reliance is placed upon priority warranties implied from the law. After examining the statutes, the common law, and the equities of the marketplace, we can find no such warranties.

Cited in support of cross claimants' position are section 1168 and 1464 of the New York Real Property Tax Law and section 5-54.0 of the Nassau County Administrative Code. But, in terms, these provisions deal with presumptive evidence of the title of the purchaser, not priorities. For example, section 5-54.0 of the Nassau County Administrative Code provides in part

"Every such conveyance shall be attested by the County Treasurer and the seal of the County Treasurer shall be attached thereto. When so executed, the conveyance shall be presumptive evidence that:

1. The sale of the tax lien was regular.
2. All proceedings prior to such sale, including the assessing of the lands affected by such tax lien were regular."

Section 5-68.0 of the Nassau County Administrative Code and the applicable provisions of Section 1464 of the

Real Property Tax Law of the State of New York cover warranties as to proper assessment, levying of tax and proceedings for collection of tax -- issues of validity, not priority.

For example, the Code reads in part:

"5-68.0 REIMBURSEMENT FOR INVALID OR IRREGULAR CERTIFICATES OF SALE. a. When any holder of tax liens shall be unable to recover or retain possession of any real estate affected by the tax lien, by reason of any irregularity or error in:

1. The assessment of real property;
2. The levying of any tax thereon; or
3. The proceedings for the collection of any tax, the county treasurer, with the approval of the county comptroller, shall reimburse such holder. . . ."

As already noted, there was no invalidation or irregularity here.

The legislative history of these statutes reinforce our conclusion. Tax deeds were once fragile property interests subject to destruction by a procedural defect or by an unnotified claimant's protest. These statutory provisions were adopted to avoid disputes about validity and to enhance the marketability of title to lands obtained through tax sales, but not to guarantee a profit to the purchasers. See, e.g., Blatnick v. Ciancimino, 1 App.Div. 2d 383, 151 N.Y.S.2d 267 (2d Dept.

1956); Note, Marketable Title in New York State: Tax Deeds, 9 Syracuse L.R. 69, 79 (1957); Note, The Current Status of Tax Titles: Remedial Legislation v. Due Process, 62 Harv. L.R. 93 (1948). New York has not enacted a protective statute covering priorities. Only when the statutory warranty of validity of the lien has been breached is the New York municipality obligated to return the taxes paid by the lien purchaser. See e.g., In re Estate of Wadham, 249 App.Div. 271, 293<sup>2</sup> N.Y.S. 102 (4th Dept., 1936) (tax erroneous and void); Matter of Niagara County Treasurer, 52 N.Y. State Dep't. Rep. 475 (Dept. Tax. and Fin. 1935) (illegal assessment); Cf. 2 N.Y. Ops. of State Comptroller 402 (1946); Informal Opinion of Attorney General on Invalid Tax Sale, 48 State Dept. Rep. 606 (1933); Ops. of Nassau Co. Attorney No. 3289 at 21724 (1962).

Claimants can find no comfort in the common law. The law traditionally placed all risks upon the tax purchaser. At common law, he buys under the rule of caveat emptor.

" . . . so far as the money paid for taxes is concerned, it is familiar law that a purchaser of a tax title takes all the chances. There is no warranty on the part of the State."

Hussman v. Durham, 165 U.S. 144, 150 (1897).

See also Martin v. Barbour, 34 F. 701 (E.D. Ark. 1888); 16 McQuillin, The Law of Municipal Corporations, § 44.172 at 473 (3d ed. 1972). "The Tax Sale Certificate," according to the Nassau County Attorney, "is held by the purchaser subject to the Rule of Caveat Emptor." Ops. of Nassau Co. Attorney No. 1382 at 7794 (1940). "Under the common law rules, [the purchaser] would get nothing unless he got the land itself." 4 Cooley, Taxation § 1553 at 3045 (4th ed. 1924). In the absence of statutory provisions, the purchaser has no remedy for refund against the taxing authorities. See, e.g., State v. Casteel, 110 Ind. 174, 11 N.E. 219 (1887); Harding v. Auditor-General, 136 Mich. 358, 99 N.W. 275 (1904); Norris v. Burt County, 56 Neb. 295, 76 N.W. 551 (1898).

Equities of the market place support the conclusions required by legal precedent. Economic risk -- with the possibility of substantial gain or loss -- is accepted and welcomed by those who bargain for tax liens. On the one hand, there is the possibility of gaining title to a valuable parcel for relatively small sums. But, on the other hand, changing circumstances can harm the lienholder's investment with no remedy against the taxing authorities. cf. In re County of Nassau, 24 N.Y.2d 621, 301 N.Y.S.2d 564, 249 N.E. 2d 426 (1969) (condemnation extinguished tax purchasers' right to title



leaving only an equitable lien on the proceeds of condemnation).

In this action, claimants were in a better position than most lienholders. They had ample forewarning of the risks inherent in their transaction because the United States mortgage was a matter of public record at the time of purchase. The volume of case law holding federal claims superior to municipal claims should have alerted them to possible dangers. But, as businessmen, the claimants went ahead and sought the profit that is often the reward for bearing risks. Under the law of the market place, they must take the loss that is often the price for assuming risks.

#### Conclusion

Statutory and common law of New York as well as the law of the market place impose the risk of changing circumstances upon those who sought to gamble on, and profit from, changing circumstances -- the lienholders. They had notice on the certificate of sale that they bought "subject to" any "superior" tax liens of the federal government. They are charged with notice of the prior federal mortgage. Their claims for a refund must be denied under applicable state law.

The rules of this case will undoubtedly make tax liens on property such as MacArthur much less attractive.

Adverse effects on municipalities and taxpayers can be expected. But power to rectify priorities lies with Congress and to create warranties with the New York Legislature.

The motion for summary judgment of the County, Town, Village and School District against the cross claimants is granted. This memorandum, consisting of findings of fact and law, constitutes the final judgment. In the absence of a new motion, no party shall have costs or disbursements.

So ORDERED.

Dated: Brooklyn, New York  
November 1973.

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U. S. D. J.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

★ NOV 20 1973 ★

TIME A.M. ....

P.M. ....

JUDGMENT

71 C 1023

-----x  
UNITED STATES OF AMERICA, :

-against- :

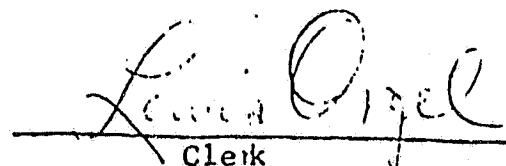
GENERAL DOUGLAS MAC ARTHUR SENIOR :  
VILLAGE, INC., STATE OF NEW YORK, :  
COUNTY OF NASSAU, VILLAGE OF :  
HEMPSTEAD, TOWN OF HEMPSTEAD, :  
SCHOOL DISTRICT No. 1, SADIE :  
SCHWARTZ, D.C.R. HOLDING CORP., :  
HENRIETTA RAND, MARTHA BARKUS, :  
SHIRLEY HERSHKOWITZ, :

Defendants. :  
-----x

A Memorandum of Decision and Order of Honorable Jack B. Weinstein, United States District Judge, having been filed on November 9, 1973, granting<sup>the</sup> motion for summary judgment of the Count of Nassau, Town of Hempstead, Village of Hempstead, and School District No. 1, against the cross-claimants, Sadie Schwartz, D.C.R. Holding Corp., Henrietta Rand, Martha Barkus, and Shirley Hershkowitz, it is

ORDERED and ADJUDGED that summary judgment is granted against the cross-claimants, that the cross-claimants shall take nothing on their cross-claim, and that no party shall be entitled to costs or disbursements against any other.

Dated: Brooklyn, New York  
November 20, 1973

  
Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff

-against-

GENERAL DOUGLAS MacARTHUR SENIOR  
VILLAGE INC., COUNTY OF NASSAU,  
VILLAGE OF HEMPSTEAD, TOWN OF  
HEMPSTEAD, SCHOOL DISTRICT NO 1.,  
SADIE SCHWARTZ, DCR HOLDING CORP.,  
and  
Defendants

NOTICE OF APPEAL

71 C 1023

PLEASE TAKE NOTICE that HENRIETTA RAND, MARTHA BARKUS and SHIRLEY HERSHKOWITZ, several of the defendants above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment dismissing the cross-claims of the said defendants in this action against the defendants, Village of Hempstead and County of Nassau, which said judgment was entered herein on the 9th day of November 1973 and from each and every part of said judgment.

Michael P. Gurlides  
Attorney for the defendants,  
Rand, Barkus and Hershkovitz  
194 Old Country Road  
Mineola N.Y. 11501

To: Clerk of the District Court  
Eastern District, New York  
225 Cadman Plaza East  
Brooklyn N.Y. 11201

Joseph Jaspan Esq  
County Attorney Nassau County  
Executive Building  
Mineola N.Y. 11501

Saul Horowitz Esq  
Counsel for the Village of Hempstead  
250 Fulton Avenue  
Hempstead N.Y. 11550

Robert A. Morse Esq  
United States Attorney  
Cadman Plaza  
Brooklyn N.Y. 11201

Stanley Beals Esq  
380 North Broadway  
Jericho, N.Y. 11753

John O'Shaughnessy Esq  
Hempstead Town Hall  
Main Street  
Hempstead N.Y. 11550

Gilbert Henoch Esq  
320 Fulton Street  
Hempstead N.Y.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA

-Plaintiff

-against-

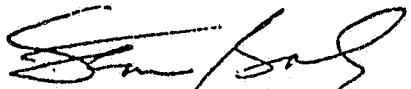
NOTICE OF APPEAL

Index #71-C-1023

GENERAL DOUGLAS MacARTHUR SENIOR  
VILLAGE, INC., STATE OF NEW YORK,  
COUNTY OF NASSAU, VILLAGE OF  
HEMPSTEAD, TOWN OF HEMPSTEAD,  
SCHOOL DISTRICT NO. 1, SADIE SCHWARTZ,  
D.C.R. HOLDING CORP., HENRIETTA RAND,  
MARTHA BARKUS and SHIRELY HERSHKOWITZ

-Defendants  
-----

NOTICE IS HEREBY GIVEN that SADIE SCHWARTZ,, one of the  
Defendants above named, hereby appeals to the United States  
Court of Appeals for the Second Circuit from the final judg-  
ment dismissing the cross-claim of said Defendants in this  
action against Defendant, County of Nassau, Town of Hempstead,  
and School District #1, which said judgment was entered herein  
on the 9th day of November, 1973 and from each and every part  
of said judgment.

  
STANLEY BEALS  
Attorney for Defendant,  
SADIE SCHWARTZ  
Office and P.O. Address  
380 N. Broadway  
Jericho, New York 11753  
516-931-2500

To: Clerk of the United  
States District Court for  
the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Hon. Robert A. Morse  
United States Attorney  
Eastern District of New York  
Cadman Plaza  
Brooklyn, New York

Joseph Jaspán, Esq.  
County Attorney of Nassau County  
Executive Building  
Mineola, New York 11501

Saul Horowitz, Esq.  
Corporation Counsel for the  
Village of Hempstead  
250 Fulton Avenue  
Hempstead, New York 11550

John O'Shaughnessy, Esq.  
Hempstead Town Hall  
Town Hall Plaza  
Main Street  
Hempstead, New York 11550

Gilbert Hénóch, Esq.  
320 Fulton St.  
Hempstead, New York

Schiffmacher, Cullen, Rochford  
& Farrell, Esqs.  
98 Cutter Mill Road  
Great Neck, NY 11021

Michael P. Gurlides, Esq.  
194 Old Country Road  
Mineola, New York 11501

NOTICE OF ENTRY

Sir : PLEASE TAKE NOTICE that the within  
is a true copy of a

duly entered in the office of the clerk of the within  
named court

on 19

Dated: 19

Yours, etc.,

*Stanley Beals*

Attorney for

Office and Post Office Address

380 NORTH BROADWAY

JERICO, N. Y. 11753

To:

Attorney for

NOTICE OF SETTLEMENT

Sir : PLEASE TAKE NOTICE that

o' which the within is a true copy will be pre-  
sented for settlement to Mr. Justice

one of the Justices of the within named Court  
at

on the day of 19

at M.

Dated: 19

Yours, etc.,

*Stanley Beals*

Attorney for

Office and Post Office Address

380 NORTH BROADWAY

JERICO, N. Y. 11753

To:

Esq .

Attorney for

Index No: 71-C-1023

19

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-Plaintiff

-against-

GENERAL DOUGLAS MacARTHUR SENIOR  
VILLAGE, INC., ET ALS

NOTICE OF APPEAL

*Stanley Beals*

Attorney for

Office and Post Office Address

380 NORTH BROADWAY

JERICO, N. Y. 11753

(516) 931-2500

To:

Esq .

Attorney for

Service of a copy of the within

is hereby admitted.

Dated, N. Y.,

19

Attorney for



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,  
Plaintiff,

-against-

GENERAL DOUGLAS MacARTHUR SR.  
VILLAGE, INC., STATE OF NEW YORK,  
COUNTY OF NASSAU, VILLAGE OF  
HEMPSTEAD, TOWN OF HEMPSTEAD,  
SCHOOL DISTRICT NO.1, SADIE SCHWARTZ,  
D. C. R. HOLDING CORP., HENRIETTA  
RAND, MARTHA BARKUS and SHIRLEY  
HERSHKOWITZ,

Defendants.

Index # 71-C-1023

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that D. C. R. Holding Corp., one of the defendants above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment dismissing the cross-claim of said defendant in this action against defendant, Village of Hempstead, which said judgment was entered herein on the 9th day of November, 1973 and from each and every part of said judgment.

SCHIFFMACHER, CULLEN, ROCHFORD & FARRELL

By:

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